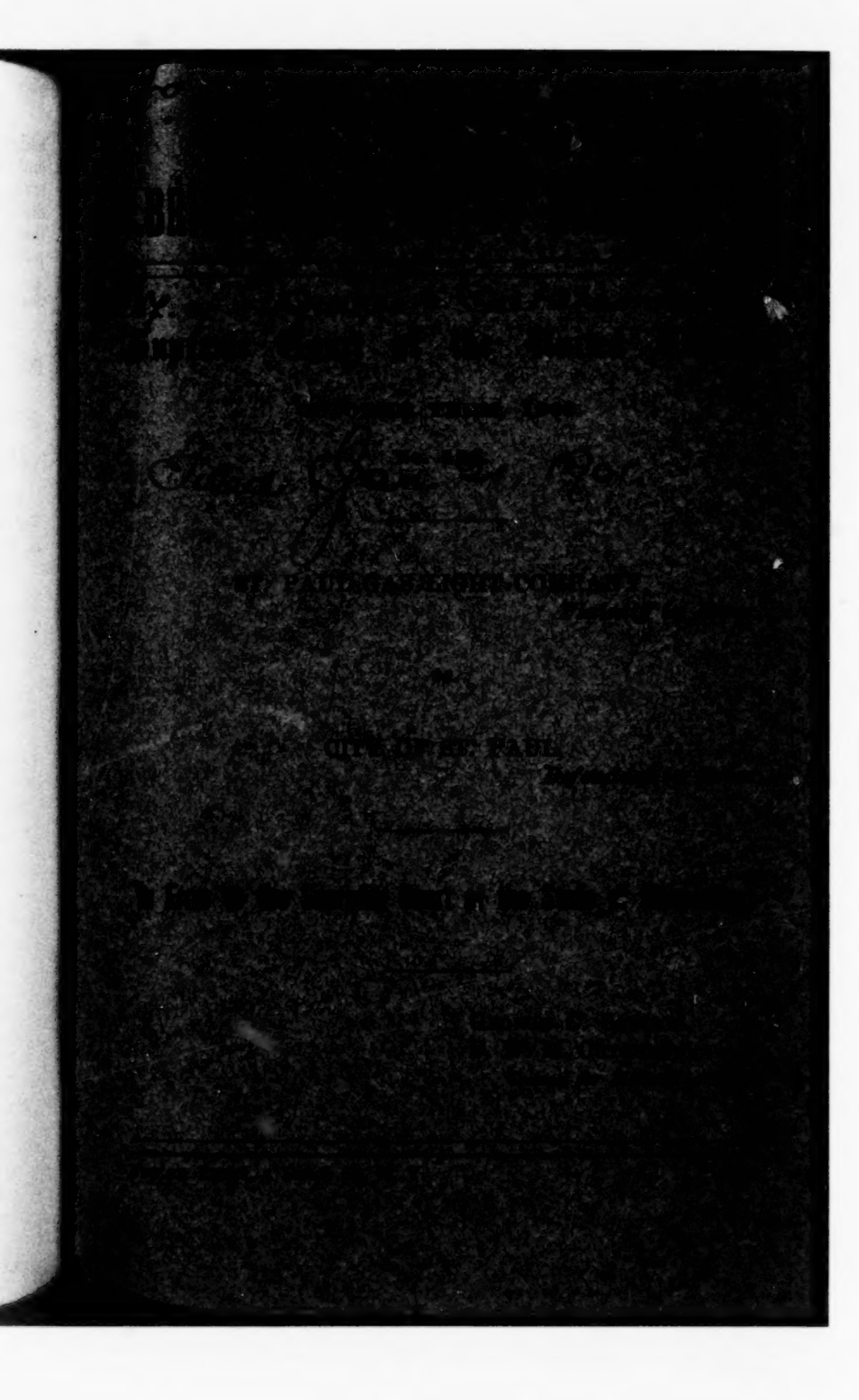

Supreme Court of the United States.

OCTOBER TERM, 1900.

No. 183.

ST. PAUL GAS LIGHT COMPANY,
Plaintiff-in-Error,

vs.

CITY OF ST. PAUL,
Defendant-in-Error.

BRIEF FOR PLAINTIFF-IN-ERROR.

Statement of Facts.

The plaintiff-in error was incorporated as a gas company by special act of the Territorial Legislature of Minnesota in 1856 (*S. L. Minnesota, 1856, Chapter 53. For copy see Appendix A hereto*). It has performed all the conditions prescribed by its charter and has invested in its property and business very large sums of money in reliance upon the provisions of that instrument. For more than forty years it has been engaged in producing gas and supplying the same to the City of St. Paul and its inhabitants, and for more than fifteen years has also produced and supplied electric light, electric power and steam heat (*Findings of Fact, Printed Record, folios 56 and 57*).

Among other provisions its charter includes the following:

"That it shall be the duty of the St. Paul Gas Light Company to prosecute the works necessary to the lighting the whole city and suburbs with gas, and to lay their pipes in every and all directions, whenever the Board of Directors shall be satisfied that the expenses thereon shall be counterbalanced by the income accruing from the sales of gas. It shall also be their duty to put the gasworks into successful operation as soon as practicable: PROVIDED, That whenever the corporation of the City of St. Paul shall, by resolution of the Board of Aldermen, direct lamps to be erected and lighted in the streets of the City, the company shall make contract therefor and furnish and provide, lay, set up and keep in good repair, at their own proper expense and charge, the street posts and lamps, and their pipes and meters, all to be of the best quality of work and material now in use. In consideration whereof, the said corporation of the City shall pay quarterly to the St. Paul Gas Light Company, an interest of eight per cent. *per annum* on the amount of the sum of the original cost of said street lamps and lamp posts, gas meters and gas pipes, and the cost of laying and erecting the same. But said company shall not be bound to lay every pipe in such places where the proceeds from the sale of gas light would not be sufficient to defray the expenses of furnishing the same" (*Appendix A, Section 9*).

"That if after the expiration of twenty years from and after the first day of January, 1857, the corporation of the City of St. Paul should resolve to purchase the said gas works from the St. Paul Gas Light Company, which they hereby have a right to do, the price shall be fixed by arbitrators, * * * " (*Appendix A, Section 10*).

"That in the event the said City shall decline to purchase at the end of twenty years, as provided in the preceding section, then the Company shall, in like manner, at the end of twenty years from and after the first day of January, A. D. 1877, and provided the Board of Aldermen then resolve to purchase the same, sell and convey the City all their estates, interest and titles, to the said gas works in manner as is before provided in Section Ten * * *" (*Appendix A, Section 11*).

"The corporation of the City of St. Paul and the Board of Directors of the St. Paul Gas Light Company may contract for and make regulations relating to the lighting of said City with gas, in such manner as may be agreed upon, and they may make generally such contracts in relation to the business of the Company as may be beneficial to them and the public" (*Appendix A, Section 14*).

"This act shall be in force for the term of twenty-five years from and after the first day of January, in the year of our Lord one thousand eight hundred and fifty seven, unless the Company hereby incorporated shall sell and convey within the said term of twenty years, their gas works, lands, rights and privileges, as herein provided, to the City of St. Paul * * * ; but should the said City not resolve to purchase at either of the times provided herein, then this act shall be in full force for an additional term of ten years from and after the last date mentioned for such sale and purchase, and no longer * * *" (*Appendix A, Section 15*).

"This act shall be in force from and after its passage, and shall be deemed a public act, and be favorably construed for the purposes herein expressed and declared in all Courts and places" (*Appendix A, Section 16*).

[The City permitted both January 1, 1877, and January 1, 1897, to pass without attempting to exercise its right to purchase the property and interests of the Gas Company, and the latter's charter-act will admittedly remain in force until January 1, 1907.]

Exercising the power conferred by Section 9 of the Gas Company's charter, the City, at various times prior to January 1, 1897, by resolutions of its Board of Aldermen or Common Council, directed street-lamps to be erected and lighted by the Company to the aggregate number of 3,362 and in every case the Company obeyed the orders so given in the manner prescribed in its charter (*Findings of Fact, Printed Record, fol. 59*).

From the time of the erection of each of these 3,362 lamps until March, 1896, the Gas Company supplied it with gas under various express contracts with the City (*Findings of Fact, Printed Record, fol. 59*).

To the contract for street lighting entered into in March, 1896, certain specifications were attached, which contained a provision fixing the maximum number of lamps to be lighted during the ensuing year at 3,031 and reserving to the City the right to terminate the contract, as to any given lamp or lamps, by written notice to that effect (*Findings of Fact, Printed Record, fol. 60*).

The contract itself contained the following recital:

"Whereas, under and by virtue of the terms of section nine (9) of the Act of the Legislature of said State of Minnesota constituting the charter of said St. Paul Gas Light Company, party of the first part, said City ot St. Paul, Minnesota, party of the second part, *is under obligation* to pay to said party of the first part interest upon the original cost of the street lamps, lamp posts, gas meters, gas pipes, and the cost of erecting and laying the same, *at any time* provided by said party of the first part for the service of said party of the second part at the request and order of said party of the second part, at the rate of eight (8) per cent. per annum, payable quarterly." (*Findings of Fact, Printed Record, fol. 66*).

The contract also contained the following provision:

"It is also expressly understood and agreed that none of the terms or provisions of this contract are to be construed to annul or modify in any way the obligation of said City of St. Paul to pay to said St. Paul Gas Light Company interest at the rate of eight (8) per cent. per annum, payable quarterly upon the original cost of the street lamps, lamp posts, gas meters, gas pipes and the cost of erecting and laying the same, *at any time* provided by said St. Paul Gas Light Company for the service of said City of St. Paul, at the request and order of said City of St. Paul, as provided by the terms of section nine (9) of the act of the Legislature of said State of Minnesota, constituting the charter of said St. Paul Gas Light Company, as aforesaid" (*Findings of Fact, Printed Record, fol. 70*).

And it should be stated, in passing, that each of the contracts of 1886, 1890 and 1891, respectively, had contained a recital of the obligation of the City, under Section 9 of the Company's charter, to pay interest, identical with that quoted from the contract of 1896 (*Findings of Fact, Printed Record, fols. 62 and 63*).

During the early part of the contract year 1896–7, the Company lighted 3,031 lamps (331 remaining idle), but, having been directed by the City to discontinue certain lamps, during the remainder of the year including some portion of 1896 and all of 1897, up to May 1st, lighted only 2,690 thereof (672 remaining idle), (*Findings of Fact, Printed Record, fols. 60, 61 and 62*).

In March, 1897, the Gas Company and the City entered into another contract for street lighting. The specifications attached

to this contract were, in the particulars above noticed, identical with those attached to the contract of 1896. The contract, proper, differed from that of 1896, in this, that, instead of the clauses above quoted from the contract of 1896, it contained simply a stipulation that none of its terms should be taken to prejudice the claims of either party as to the City's obligation, if any, to pay interest under Section 9 of the Company's charter (*Findings of Fact, Printed Record, fol 61*).

During the remainder of the year 1897, the Company, having been directed by the City to light but 2,690 lamps, lighted only that number. The lamps that were out of service, however, were at all times maintained ready to be put into service again upon the City's order (*Findings of Fact, Printed Record, fols. 61 and 62*).

The cost of the Gas Company of the 3,362 lamps above mentioned was $85,539.53, all of which it had paid out prior to January 1, 1897. The cost of it, of the 672 lamps that were not in service during the year 1897, was $17,830.75 (*Findings of Fact, Printed Record, fol. 62*).

The City paid the Gas Company interest at the rate of eight (8) per cent. per annum upon the cost of each of the 3,362 lamps mentioned, for the whole period elapsing between the erection of such lamp and post and January 1, 1897 (*Findings of Fact, Printed Record, fol. 62*).

On July 1, 1897, or shortly thereafter, the Company demanded payment of interest for six months upon the whole cost of the 3,362 lamps (*Findings of Fact, Printed Record, fol. 63*). Before any action upon this demand was taken, the Common Council of the City adopted and the Mayor approved (on August 20, 1897) a resolution reading as follows:

"Resolved, that the St. Paul Gas Light Company be, and it is hereby required forthwith to remove the gas street lamp posts in that portion of the City now lighted with electric light under contract with said Company, and which said lamps have been discontinued by order of the Board of Public Works.

"Resolved, further, that the Board of Public Works is hereby required to transmit to the City Comptroller a statement showing the number and location of said gas street lamp posts not now in service in said electric light district above referred to,

and that from and after the passage of this resolution no interest be paid by the City of St. Paul to said St. Paul Gas Light Company on account of the cost and the purchase and equipment of said gas street lamp posts" (*Complaint, Printed Record, fols. 40 and 41; Answer, fol. 47; Findings of Fact, fol. 63*).

[The effect of this resolution will be discussed in another portion of this argument. The various provisions of the city charter affecting the power of the Common Council to pass it and its effect after passage will be found collected in "*Appendix* B" hereto.]

The list required by this resolution was prepared by the Board of Public Works and was by it transmitted to the City Comptroller, who thereafter approved the Gas Company's claim for interest accrued during the first half of the year only to the extent of the amount due upon the cost of the lamps then remaining in service. (Although this fact does not *expressly* appear by the present record, it did appear in evidence upon the trial and does now appear by implication, and it will be admitted to be true.) The amount thus allowed the Council ordered paid, and it was paid on October 20, 1897. The Company's claim for interest for the last half of the year 1897 was likewise approved and allowed only to the same extent, the amount allowed being paid January 18, 1898. The City has wholly failed to make any other payment on account of this interest for the year 1897 (*Findings of Fact, Printed Record, fols. 63 and 64*).

Proceedings in this Action.

This action was brought by the Gas Company against the City to recover the amount of the unpaid balance of interest upon the cost of the 3,362 lamps mentioned, that accrued during the year 1897.

The Complaint was drawn upon the supposition and arrangement that the City would demur thereto, and therefore contains many allegations that would ordinarily have been left to be set up by answer. Among other things, it set up the resolution of August 20, 1897, above quoted, and expressly asserted that the same and all laws of the State authorizing its

passage are void as being in direct contravention of Section 10, Article I of the Constitution of the United States, and of Section 1 of Article XIV of the Amendments thereto (*Complaint, Printed Record, fol. 42*).

The Answer filed on behalf of the City admitted the incorporation of the parties, the nature and extent of the Gas Company's business, its large investments therein and the enactment and language of its charter-act (*Answer, Printed Record, fol. 44*), the various orders given to the Company by the City for the erection of the 3,362 street-lamps mentioned, and the Company's obedience thereto (*Answer, Printed Record, fols. 44 and 45*), the facts set out in the complaint with reference to the length of time during which the lamps had remained in service, respectively (*Answer, Printed Record, fols. 45, 46 and 52*), the passage of the resolution of August 20, 1897 (*Answer, Printed Record, fol. 47*), the demands upon the City for payment of interest accrued during the year 1897, and that the payments made were only those alleged in the complaint (*Answer, Printed Record, fol. 47*). It put the Company to its proof of the performance of the stipulations prescribed by the latter's charter as conditions precedent to its enjoyment of the rights thereby conferred (*Answer, Printed Record, fol. 44*), and of the cost of the lamps and of their erection and equipment (*Answer, Printed Record, fol. 47*). It denied that at any time whatever, there had become due from the City to the Company as interest upon the cost of the lamps mentioned the sums stated in the complaint, or any sum (*Answer, Printed Record, fol. 47*). It then set up as a defense a provision contained both in the street lighting contract made by the City and the Company on March 14, 1896, and in that made May 1, 1897, whereby it was stipulated that after service by the City upon the Company of notice to discontinue lighting any lamp or lamps covered by the contract, the Company should not be entitled to any further compensation *for the lighting* of the lamp or lamps so ordered discontinued, and the fact that the lamps upon the cost of which interest had not been paid had been discontinued by virtue of this provision. It also contained allegations that these contracts included no agreement for the payment of in-

terest and that the City had performed them upon its part (*Answer, Printed Record, fols. 47-52*).

The action was tried before one of the Judges of the District Court of Ramsey County, Minnesota, who ordered judgment in the Company's favor for the full amount claimed (*Printed Record, fol. 64*). Judgment was so entered (*Judgment, Printed Record fols. 71 and 72*). The City took an appeal to the Supreme Court of the State. In that Court the discussion centered upon the question of the proper construction of Section 9 of the Gas Company's charter. The Court, by its judgment, reversed the judgment of the District Court, adjudged that the Company take nothing by its action against the City, and gave judgment in favor of the City and against the Company for $59.58, costs (*Judgment, Printed Record, fol. 83*).

THE JUDGMENT OF THE SUPREME COURT OF MINNESOTA is founded upon the following conclusions, in which are embodied the entire substance of the Court's opinion. (*Printed Record, folios 75 to 80*):

(1) It is unreasonable that the City should be obliged to pay interest for a long period upon the amount of the cost of street lamps that during the major portion of such period have been unnecessary and consequently disused; and such a result might flow from the construction of the provision in question contended for by the Company.

(2) It is equally unreasonable that the City should be under obligations to pay interest upon the cost of street lamps erected by its direction only for such time as it may arbitrarily permit service by means of such lamps to be contained.

(3) In view of the omission from the act of any provision of a special means by which the City can compel the Company to light street lamps in the absence of voluntary contract and of the insertion of special authority to enter into such contracts, it must be held that the City cannot enforce, and therefore within the intent of the law cannot give, an order to light lamps until it has entered into a contract for their lighting; and as the Company's obligation to erect the lamps arises only upon a direction by the City to "erect *and light*" them, that obli-

gation cannot arise until a contract for lighting satisfactory to the Company has been made.

(4) As by means of such a contract the Company may secure indemnification against loss by reason of its investment in the lamps and their equipment, it is reasonable to hold (and the Court does hold) that the City's obligation to pay interest upon the amount of the cost of a street lamp and its equipment continues only for the period during which the lamp remains in service.

A petition for a rehearing, filed on behalf of the Company having been denied, a writ of error was sued out to bring the case to this Court for review.

Assignments of Error.

The following are the assignments of error filed in this Court by the plaintiff in error, all of which are insisted upon:

"I. The Supreme Court of Minnesota erred in its decision of said suit in holding that the contract between the plaintiff in error and the defendant in error embodied in Section 9 of Chapter 53, Special Laws of Minnesota, 1856, being an Act of the Legislature of the Territory of Minnesota, entitled 'An Act to incorporate the St. Paul Gas Light Company,' approved March 1st, 1856, and formed by the passage and acceptance of the said Act, did not, in consequence of the adoption of the resolutions of the Board of Aldermen and Common Council of defendant in error directing plaintiff in error to erect and light lamps in the streets of said city, defendant in error, and the acts of plaintiff in error performed in obedience to said resolutions, obligate the defendant in error to pay the plaintiff in error an interest of eight per cent. per annum upon the amount of the sum of the original cost of the lamps, lamp-posts, pipes and meters erected and furnished by plaintiff in error in obedience to said resolutions except for periods during which said lamps were actually in the service of defendant in error under contract for lighting the same between plaintiff in error and defendant in error.

II. The Supreme Court of Minnesota erred in its decision of said suit in holding that the said contract between the plaintiff in error and the defendant in error embodied in said Section 9 of Chapter 53, Special Laws of Minnesota, 1856, and formed as aforesaid, did not obligate the defendant in error to pay to plaintiff in error an interest of eight per cent. per annum upon the amount of the cost of every lamp, lamp-post, pipe, and meter erected in obedience to the order of defendant in error given, as hereinabove stated, for the whole period elapsing between the date of the erection and furnishing of such lamp, post, pipe or meter, and the date for the expiration of the term of the charter act of plaintiff

in error, to wit, said Chapter 53 of the Special Laws of Minnesota, 1856.

III. The Supreme Court of Minnesota erred in its decision of said suit in holding that the resolution of the Common Council of said defendant in error approved August 20th, 1897, and set forth in full in the complaint herein, which read as follows:

'Resolved, That the St. Paul Gas Light Company be, and it is hereby, required forthwith to remove the gas street lamp-posts in that portion of the city now lighted by electric light under contract with said company, and which said lamps have been discontinued by order of the Board of Public works.

'Resolved further, That the Board of Public Works is hereby required to transmit to the City Comptroller a statement showing the number and location of said gas street lamp-posts not now in service in said electric light district above referred to, and that from and after the passage of this resolution no interest be paid by the City of St. Paul to said St. Paul Gas Light Company on account of the cost of the purchase and equipment of said gas street lamp-post,' is not a law of said State of Minnesota within the meaning of Section 10, Article 1, of the Constitution of the United States.

IV. The Supreme Court of Minnesota erred in its decision of said suit in holding that said resolution of the Common Council of defendant in error approved August 20th, 1897, does not impair the obligation of the said contract between plaintiff in error and defendant in error embodied in said Section 9 of said Chapter 53 of the Special Laws of Minnesota, 1856, and formed as hereinabove set forth, and that said resolution is not in conflict with the provisions of Section 10, Article 1, of the Constitution of the United States, which declares that no state shall pass any law impairing the obligation of contracts.

V. The Supreme Court of Minnesota erred in its decision of said suit in holding that said resolution of the Common Council of the defendant in error approved August 20th, 1897, and the acts of the legislature of the

State of Minnesota empowering said common council to pass the same do not impair the obligation of the said contract between plaintiff in error and defendant in error embodied in said Section 9 of said Chapter 53 of the Special Laws of Minnesota, 1856, and formed as hereinabove set forth, and that said resolution and each and all acts of the legislature of said State of Minnesota empowering said council to pass the same are not in conflict with the provisions of Section 10, Article 1, of the Constitution of the United States, which declares that no state shall pass any law impairing the obligation of contracts.

VI. The Supreme Court of Minnesota erred in its decision of said suit in holding that the said resolution of the Common Council of defendant in error approved August 20th, 1897, and the acts and doings of defendant in error thereunder did not deprive plaintiff in error of property, to wit, of the rights vested in it under said contract embodied in said Section 9 of said Chapter 53 of the Special Laws of Minnesota, 1856, and formed as hereinabove set forth, without due process of law, and that said resolution and the acts and doings of defendant in error thereunder are not in conflict with the provisions of Section 1 of Article XIV of the Amendments to the Constitution of the United States, which declares that no state shall deprive any person of property without due process of law.

VII. The Supreme Court of Minnesota erred in its decision of said suit and in its final judgment entered therein, in this, that it gave effect to said resolution of the common council of said defendant-in-error, approved August 20th, 1897, and the acts and doings of said defendant-in-error thereunder, which said resolution was in direct and necessary violation of said Section 10 of Article 1 of the Constition of the United States, and which said resolution and the acts and doings of defendant thereunder, were in direct and necessary violation of said Section 1 of Article XIV of the Amendments to the Constitution of the United States.

VIII. The Supreme Court of Minnesota erred in its de-

cision of said suit in directing that the judgment of the District Court of Ramsey County, Minnesota, theretofore entered in said suit be reversed, and directing that judgment be entered in said suit against said plaintiff-in-error, and in favor of said defendant-in-error.

IX. The Supreme Court of Minnesota erred in this, that by the record aforesaid it appears that the judgment given by it, as aforesaid, was given for said defendant-in-error and against said plaintiff-in-error, whereas, by the law of the land, the said judgment ought to have been given for the said plaintiff in-error against said defendant-in-error."

Argument.

Counsel for the defendant in error has informed me that upon the hearing he will challenge the jurisdiction of this court to review the judgment of the Supreme Court of Minnesota. Therefore, before proceeding to consider the ultimate point in the case—the construction of Section 9 of the Gas Company's charter—I will, as best I can without knowledge of the specific objections that he intends to urge, discuss the question of jurisdiction.

This court possesses jurisdiction to review the judgment of the Supreme Court of Minnesota.

Section 709 of the United States Revised Statutes provides that this Court shall have jurisdiction, upon writ of error to the highest Court of a State, to review "a final judgment or decree in any suit * * * in which is drawn in question * * * the validity of a statute of, or an authority exercised under, any State, on the ground of their being repugnant to the Constitution * * * of the United States, and the decision is in favor of their validity."

Given, then, an action in which a party claims that some instrument constitutes, or some transaction raises, a contract entitling him to the rights that he asserts and that some subsequent law of the State is void because impairing the obligation of such contract, and a decision of the highest Court of a State whereby the law thus drawn in question is held to be valid, and, if there be color for the claims so made, and if the decision of the state court is not also founded upon some doctrine of local law sufficient in itself to sustain the judgment rendered, it will be conceded that a case exists over which this court has jurisdiction.

The questions, whether there is a contract as claimed, and, if so, what its interpretation should be and whether the law assailed does impair the contract obligation, are all proper to a consideration of the case upon its merits.

It must be admitted that in this case the State Court had before it an instrument (Section 9 of the Gas Company's charter) that was claimed by the plaintiff in error to embody a con-

tract under which it was entitled to recover the amount sued for; that there was color for this claim; that the Resolution of August 20, 1897, was passed subsequently to the formation of the contract claimed; that the Company attacked the validity of this resolution upon the ground that it impaired the obligation of the Company's contract; that there was color for this attack; and that the decision of the Supreme Court of Minnesota, made in the face of these claims, was founded solely upon certain conclusions as to the proper interpretation of the contract, and, therefore, not upon any doctrine of local law sufficient in itself to sustain the judgment. There are, then, so far as I can conjecture, but two objections to the jurisdiction that can be suggested:

(1) That the Resolution of August 20, 1897, is not a law of the State of Minnesota;

(2) That the decision of the Supreme Court of Minnesota was not in favor of the validity of the resolution.

I.

It is, of course, too late for the contention that a municipal ordinance or resolution may not be a law of a state within the meaning of the Constitution to be seriously urged. The reports of this Court contain many decisions to the contrary effect.

For examples, see

Murray v. Charleston, 96 U. S., 432.
Wright v. Nagel, 101 U. S., 791.
Hamilton Gas Light Co. v. Hamilton City, 146 U. S., 258.
Walla Walla City v. Walla Walla Water Co., 172 U. S., 1.

See also

N. O. Water Works v. La. Sugar Co., 125 U. S., 18, p. 31.
Bacon vs. Texas, 163 U. S., 207, p. 216.

This resolution was not only in the form of a law, but was by

the charter of the City expressly invested with the full force of and declared to be a law of the State (*See Appendix B, Sec. 40*).

Its operation was that of a law. It contains directions and inhibitions addressed by the City Council (the local Legislature) to the administrative officers of the City—directions and inhibitions that actually have been observed by,and, had not the resolution been unconstitutional, would have been binding upon all such officers.

It was a law in its very essence. It will not be contended that a legislative enactment, made in the course of the discharge of sovereign or governmental functions, is not a law. And it will be admitted that the care and control of the finances of a great municipality, the provision and maintenance of a proper system of lighting its streets, and the regulation of their use are functions of government resting primarily in the State. (*See Walla Walla v. Walla Walla Water Co., 172 U. S., 1, pp. 7-11.*) The St. Paul City Council, in 1897, by delegation from the State, possessed the power and was charged with the duty to levy taxes and collect license-fees and to care for and disburse the revenues so derived, that is to say, it had entire charge of all the revenue and financial affairs of the City. (*Appendix B, Secs. 57, 40 and 56.*) It possessed the power and was charged with the duty to provide and maintain a proper system of street-lighting within the city boundaries, (*Appendix B, Sec. 40, Subd. 11.*) It likewise possessed the power and was charged with the duty to regulate the use of the streets of the City, to prevent the encumbering or obstruction of the same and to abate nuisances therein. (*Appendix B, Sec., 40, Subds. 6 and 31, and Sec. 44.*) In the exercise of these powers and the discharge of these functions, therefore, the City Council represented the state, exercised its power and performed its governmental functions. The resolution in question was adopted in the exercise of these powers, in the attempt to discharge these functions. It was not an act performed in the exercise of the City's proprietary rights or in the administration of its corporate property. It was not a mere act of dealing with the Gas Company. Counsel for the City will probably answer that, despite all this, the resolution was a mere refusal by the City to pay interest, in no way different from a refusal

21240

by an individual to pay his debts, and that for the purpose of the question in hand it should be considered as if it were the declaration of a natural person. But this contention ignores the essential difference between a natural person and a governmental body, as well as the difference in identity between the City Council and the City itself. The decrees of the individual bind no one. The decrees of the City Council, made within the scope of its authority, control its officials, and, if valid, are also binding upon the inhabitants of the City and the courts. Again, a legislative act of the City Council is not the act of the City, except in the sense that the City is bound and suffers or profits by it. The Council and the City are not identical either in fact or in law. The first is a body of men constituting the local Legislature and invested in part with the Legislative power of the State. The other is a fictitious entity composed of certain territory and its inhabitants and having a certain political organization. As a corporation a city ordinarily possesses no legislative power. It is not essential to the idea of a city even that any one of its officers or boards shall possess such power. In the case of the City of St. Paul, one of its boards (the Common Council) does exercise legislative power, but this it does by direct delegation from the State Legislature, not as the agent of the City. Its resolution, therefore, was not a mere refusal by the City to pay its debt. It was a decree of the State addressed to the City. It was in quality exactly the same thing that an act of the State Legislature prohibiting the payment of the same charge would have been.

A single fact connected with the operation of the Resolution very clearly illustrates its character as a law. The charter of St. Paul prohibits the Council to allow any claim against the City until it has been audited and adjusted by the City Comptroller (*Appendix B, Sec. 28*). This resolution, however, if not constitutionally invalid, was binding upon the Comptroller (*Appendix B, Secs. 36 and 40*). As a consequence, it not only operates to prevent the adjustment and audit of any future claim for interest upon the cost of the lamps referred to in it, but absolutely prevented any such claim ever again comingbefore the Council for consideration. And suppose that the Gas Company

had sought by mandamus to compel the City Comptroller to audit and adjust its unpaid claim for interest. This resolution, if no limitation upon the power of the State to impair the obligation of contract had existed, would have afforded the Comptroller a complete defense.

Moreover, this resolution is something more, even, than an exercise of the powers to control the matters of city finance and street lighting and to regulate the use of public highways. It is primarily and essentially an attempt by the State through the City Council (to which the discharge of the obligation arising under the Gas Company's charter had in large part been entrusted) to define this obligation, that is to say, to define the terms or limit the operation of a prior law. It is impossible to understand how a government can by legislative act define the terms or limit the operation of one of its existing laws except through the medium of a law.

Certainly this resolution falls much more clearly within the ordinary conception of what a law is than does a resolution providing for the erection of a municipal water works, such as was the subject of discussion in *Walla Walla v. Walla Walla Water Company* (*supra*), or an ordinance providing for the erection of a gas plant, such as was under consideration in *Hamilton Gas Light Company v. Hamilton* (*supra*). And yet, as was said by Mr. Justice Brown in the Walla Walla Case (*172 U. S., 1, pp. 7, 8, 10*):

"The argument of the defendant in this connection is that the action of the City in contracting with the Water Company, and in passing the ordinance of 1893 providing for the erection of water works, was not in the exercise of its sovereignty; that in these particulars the City was not acting as the agent of the State, but was merely exercising a power as agents of its citizens, and representing solely their proprietary interests; * * * and, therefore, that neither the State nor the City as its agent can be charged either with the making or the impairing of the original contract; * * *."

"We know of no case in which it has been held that an ordinance, alleged to impair a prior contract with a gas or water company, did not create a case under the Constitution and Laws of the United States."

If this resolution is not a law, then the amendment to the

Minnesota Constitution that prohibited the payment of the principal of or interest upon the bonds of the State issued in aid of railroads unless the same should first be approved by a majority of the electors of the State, was not a law (*see State v. Young, 29 Minn., 526*); nor was the ordinance of the City of Charleston that required the tax upon the city stock to be deducted from the interest due thereon (*Murray v. Charleston, 96 U. S., 432*); nor was the similar statute of Virginia that required the tax on the refunding bonds of that state to be deducted from the amounts payable upon coupons cut from those bonds (*Hartman v. Greenhow, 102 U. S., 672*); nor was the statute of Louisiana that scaled down the interest upon the refunding bonds of that State (*Louisiana v. Jumel, 107 U. S., 711*). Nor does the act of the State complained of in the case at bar differ in essence from the act of the State of Georgia in declaring void the grant of certain lands to Gunn and others, which was the subject of consideration in the leading case of *Fletcher v. Peck, 6 Cranch, 87;* or from the act of the State of Arkanas in forbidding the reception in the payment of taxes of the notes of the Bank of the State of Arkansas, which, by the charter of the Bank, the State had agreed should be received in payment of all debts due to it (*Woodruff v. Trapnall, 10 How., 190*), or from the act of the State of Tennessee in repealing a similar provision of the charter of the Bank of Tennessee, which repeal was applied by the state courts to notes outstanding at the date of the appeal (*Furman v. Nichol, 8 Wall., 44*); or from the act of the same State in declaring, through its Constitution of 1865, all notes of the Bank of Tennessee issued after the adoption of the Ordinance of Secession to be null and void (*Keith v. Clark, 97 U. S., 454*); or from any one of the various acts of the State of Virginia designed to prevent the reception in payment of taxes of the coupons attached to its refunding bonds issued under the Act of 1871, wherein it was agreed that such coupons should be receivable in payment of all taxes and dues to the State (*Poindexter v. Greenhow, 114 U. S., 270; McCullough v. Virginia, 172 U. S., 102*).

Each of the constitutional provisions, statutes, ordinances and resolutions above mentioned was merely a formal legisla-

tive repudiation of a pre-existing obligation, and (except that considered in *Fletcher v. Peck*) was, in the last analysis, a refusal, in just the same sense that the resolution now under consideration is a refusal, to make payments that the repudiating party had agreed to make. Yet each of these enactments has been held to be a law within the meaning of the impairment clause of the Constitution. The resolutoin of August 20, 1897, was such a law.

II.

It is a common error to assume, because a state court has devoted its attention solely to the construction of the contract set up, and, by interpreting this contract in such manner that the subsequent law which is the object of attack cannot conflict with it, has avoided any consideration of or reference to that law, that the decision has not been in favor of the validity of the law. But it can hardly be necessary to say that any decision, the necessary result of which is to give effect to such a law is a decision in favor of its validity, or, to repeat what this court has so often said, that even if the judgment of the state court has proceeded solely upon the contract, declaring it invalid or that it should have a construction different from that contended for by the plaintiff in error, and thereby has given effect to a subsequent law which, as the plaintiff in error claims, impairs the obligation of the contract, jurisdiction to review such judgment resides in this court.

See

Bridge Proprietors v. Hoboken Co., 1 Wall., 116, pp. 144, 145.
Furman v. Nichol, 8 Wall., 44, p. 56.
University v. People, 99 U. S., 309, p. 321.
Wright v. Nagle, 101 U. S., 789, p. 794.
Life Ins. Co. v. Needles, 113 U. S., 574, p. 579.
Louisville Gas Co. v. Citizens' Gas Co., 115 U. S., 688.
Fisk v. Jefferson Police Jury, 116 U. S,, 131.
Chapman v. Goodnow, 123 U. S., 540, p. 548.
Huntington v. Attril, 146 U. S., 658, p. 684.

21242

Wilmington, &c. R. R. v. Alsbrook, 146 U. S., 279, p. 293.
Mobile & Ohio R. R. v. Tennessee, 153 U. S., 486, p. 492.
Water Power Co. v. Street Ry. Co., 172 U. S., 475, p. 487.
McCullough v. Virginia, 172 U. S., 102, pp. 116–123.
Houston, &c. R. R. v. Texas, 177 U. S., 66, p. 77.
M. & St. Louis Ry. Co. v. Gardner, 177 U. S., 332, p. 340.

And it must be borne in mind that the expression "to give effect to," so often used by this court in discussions of this question, does not necessarily mean "to carry into effect," that is "to execute." In many cases, and necessarily in every case in which the law alleged to impair a contract obligation operates negatively, the decision of a court can give effect to the law only in the sense that the decision permits the law to operate upon the rights of the parties, leaves the parties in a situation or relationship that has arisen by reason of the existence of the law.

As an example of the truth of this, take the case of *Murray v. Charleston (96 U. S., 432)*. The City of Charleston levied a tax upon its city stock under the authority of a law that antedated the Federal Constitution. It was not and could not have been claimed that this law impaired the obligation to pay interest created by the contract contained in the stock. But the City Council also directed the City Treasurer to withhold an amount equal to the tax thus levied from the interest upon the stock when the same should become payable. Accordingly, when the interest became due, only four per cent. was paid instead of the six per cent. payable by the terms of the certificates. Murray sued to recover the amount remaining unpaid. The state court gave judgment for the defendant. This judgment, of course, did not carry into effect the Council's direction to the Treasurer. The ordinance had already operated by inducing the non-action of the officer. The judgment simply left the parties in a situation that had its origin and cause in the ordinance. The case was brought to this court upon writ

of error and the question of jurisdiction was raised. But this court held, in effect, that the case involved the question whether the operation of the ordinance upon the contract had been lawful, and therefore that the validity of the ordinance was directly brought into question and affirmed its own jurisdiction.

An equally good example may be found in *Fisk* vs. *Jefferson Police Jury* (*116 V. S., 131*).

Fisk had performed services as District Attorney for the Parish of Jefferson during the years 1871, 1872, 1873 and 1874. During this period there was in force a statute, enacted by the Legislature of Louisiana in 1871, whereby it was provided that no municipal corporation should levy a tax for any purpose that should exceed two per centum of the assessed valuation of the property therein listed for taxation. But by the Louisiana Constitution of 1880 it was declared that no parish or municipal tax for all purposes whatsoever should exceed ten mills on the dollar of valuation. Fisk recovered judgments against the Policy Jury (the governing body of the Parish) for the salary and fees due him, and, being unable to obtain payment of these judgments, made application for writs of mandamus to compel the assessment and collection of a tax therefor. The Police Jury answered, showing that at the time the applications for mandamus were made they had already levied the full amount of taxes permissible by law (*i. e.*, under the Constitution of 1880). Fisk contended that the provision of the Constitution of 1880 referred to impaired the obligation of his contracts with the Parish, but the Supreme Court of Louisiana held that he had no such contracts and disposed of the case solely upon that ground. This decision did not carry into effect the constitutional provision, but it confirmed the effect which that provision had had upon the situation of the parties —left them in the situation into which the Constitution had brought them. This was its only effect. This Court assumed jurisdiction without question and reversed the judgment below upon the ground that the provision of the Constitution of 1880 mentioned above impaired the obligations of Fisk's contracts.

Examples might be multiplied almost without end, but enough must have been said to make it plain that if the exist-

ing situation of the parties has been produced by a law, the validity of which has been drawn in question, and the judgment of the State Court leaves that situation undisturbed, effect is given to the law, the operation of the law is upheld, or, in the words of the Revised Statutes, the decision is in favor of the validity of the law.

Furthermore, if the result of the decision of the state court is to give effect to the obnoxious law, jurisdiction will exist even though the party successful in the that court may not have claimed anything in the action by virtue of the law.

The purpose of Section 10 of Article 1 of the Federal Constitution is to prevent the impairment of contract obligations by act of the state. It is a duty, with which this Court is charged, to see to it, in all cases in which the statute permits it to exercise jurisdiction, that this command of the Constitution is obeyed. So far as concerns this subject, the statute conferring jurisdiction (R. S., § 709) requires only that it shall have been claimed below that a state law has impaired the obligation of a contract relied upon by one party, and that the decision of the state court shall have upheld the law. It may be, and very likely is, true that cases in which a law *can* operate in such manner as to impair the obligation of a contract thus relied upon without at the same time necessarily forming the foundation of the adverse claim are comparatively few, but that fact cannot operate to circumscribe the jurisdiction of this court. If this court were to hold that it can take jurisdiction only of those cases in which the party that is in fact deriving advantage from the subsequent law chooses to justify under the law, it would in so doing not only arbitrarily limit its own jurisdiction as established by statute, but disable itself to perform in important cases one of its most solemn duties.

See

Murray v. Charleston, 96 U. S., 432.
McCullough v. Virginia, 172 U. S., 102.
Houston, &c. R. R. Co. v. Texas, 177 U., 66, p. 78,

which are directly in point.

It is true that in *Murray v. Charleston*, the city set forth in its answer the ordinances that were the subject of attack, but

this was done for the purpose of showing the regularity of the tax levy, and not for the purpose of claiming anything under the sections directing the retention of a portion of the interest. The city claimed a common law right to set off its claim for taxes against Murray's claim for interest and its counsel contended that the provision for retention of interest was mere surplusage (*96 U. S., p. 438*). In both *McCullough v. Virginia* and *Houston & Texas Central Railroad Company v. Texas*, the existence and operation of the obnoxious laws were apparently called to the attention of the Court only by the party attacking them.

We may then regard it as settled that, if the decision of the highest court of a state results in confirming and perpetuating a situation into which the parties have been brought by a law of the state that in the State Court was assailed by one of them as impairing the obligation of a contract upon which the attacking party relies, such decision is in favor of the validity of the law regardless of the party by whom the subsequent law was brought to the attention of the court.

We are brought, then, to the question: was the decision of the state court in this case in favor of the validity of the Resolution of August 20, 1897? Unquestionably it was. It decided that the action directed by the Resolution and subsequently taken was lawful and proper, which in substance is exactly equivalent to an express decision that the Resolution was and is valid. Nor was this merely the decision of an academic question. The judgment of the Minnesota Court gave effect to the Resolution—or, to be exact, confirmed and perpetuated the effect that the resolution had produced upon the situation of the Company and the City, respectively. What was this effect? Assuming, as we must for the purposes of this discussion, that the construction of Section 9 of the Gas Company's charter that is contended for by the Company is correct, the City has been at all times sinces 1856, under obligation to pay the Company interest at the rate of eight per cent. per annum upon the cost of every one of the 3362 lamps erected by the Company by direction of the City, without regard to whether such lamps has been at any given time employed in the city service. This obligation, up to the time of the adoption of the

Resolution of August 20, 1897, the City faithfully discharged. We know that it paid interest for the year 1896, during which many posts were out of service, upon the cost of the whole number of posts thus erected. Assuming, also, as we are entitled to assume in discussing this question, that the Gas Company's construction of Section 9 is not only correct but *plainly and unmistakably* correct, it is to be conclusively presumed that every city official would have understood and have assisted to perform the City's obligation, and therefore that the City would have continued to live up to its contract had not this resolution or some other enactment having the same effect intervened. Then came the Resolution. The City ceased to make payments of interest upon the cost of lamps not in service. We know, so far as we can know the cause that produces any effect, that the Resolution prevented further payments of interest upon the cost of the lamps mentioned. It altered the situation of the parties. As a consequence of its adoption, the money that should have gone into the treasury of the Gas Company remained in the treasury of the City. Then came this action, the whole end and aim of which was to undo the effect of the Resolution and to restore the parties to the situation they would have occupied had the Resolution not been passed. Had the judgment of the Ramsey County District Court been affirmed by the Minnesota Supreme Court, the action would have accomplished this object. But the judgment of the Supreme Court that actually was rendered confirmed and perpetuated the situation produced by the resolution, thus, within the meaning of the decisions of this Court "upholding" and "giving effect" to it.

But, it may be said, all this is based upon an assumption—the assumption that but for this resolution the City would have gone on paying interest. "Do you know," it may be asked, "that even in the absence of this resolution the City Comptroller might not have refused to audit the Gas Company's claim for interest, or, in case he did audit it, the City Council have refused to authorize its payment, or, if the claim had passed both the Comptroller and the Council, the Mayor or the City Clerk have refused to sign a warrant for its payment, or the City Treasurer have refused to pay the warrant when pre-

sented; and, if not, how do you know that this resolution made the situation of the parties what it is?"

The answer must be, "No, we do not *know* that any of these things might not have happened, but that is immaterial. We are concerned not with what might have been but with what is. We know that it was in fact this resolution that caused the cessation of interest payments in the same way in which we know that any human action is attributable to a given cause. As has already been shown, its adoption made the city's failure to pay interest absolutely inevitable. The failure was a necessary consequence of the Resolution. So far as appears, the Resolution was the sole cause of the failure to pay. A presumption arises that it was the efficient cause, and until this presumption is rebutted by something better than a metaphysical demonstration that all knowledge is illusory, this presumption must be accepted."

How did the Court know in *Murray v. Charleston* (*supra*) that the failure of the city to pay the interest upon the city stock was an effect of the city ordinance? The City Treasurer, according to the law as announced by the Supreme Court of South Carolina, would have been justified in setting off the city's claim for taxes against the stock owner's claim for interest in the absence of any ordinance. He might have done so. Yet this court found no difficulty in reaching the conclusion that the failure to pay the interest in full was the effect of the ordinance.

See also

McCullough v. Virginia, 172 U. S., 102;
Houston, etc., R. R. Co. v. Texas, 177 U. S., 66;

in each of which the connection between the law and the action complained of was deduced from the circumstances.

Moreover, the operation of the resolution as the animating cause of the City's failure to pay interest cannot be denied and, by reasonable intendment, appears upon the record. The Gas Company's complaint which, it must be remembered, was drawn upon the theory that the questions in the case were to be raised by demurrer, after setting forth the directions for the erection of the 3,362 posts, the fact of

their erection in accordance with such directions, the cost thereof, the numbers in service from January 1, to April 30, 1897, and from May 1, to December 31, respectively, and the amount of the interest accruing during the year, alleges—all in direct connection—the passage of the Resolution of August 20, 1897 (setting out the same in full), the demands by the Company for payment of the 1897 interest, the payments made and the failure of the City to pay the balance sued for, and then—still in the same connection—continues:

"Plaintiff further alleges that said resolution of said Common Council of said defendant City, approved August 20, 1897, and above set forth, and all acts of the Legislature of the State of Minnesota, if any there be, which empowered said Council to pass same, *and all acts and doings of defendant thereunder*, are in direct and necessary violation of Section 11, Article I, of the Constitution of the State of Minnesota, and of Section 10 of Article I, of the Constitution of the United States, and of Section 1 of Article XIV of the amendments to said Constitution of the United States."

Certainly this can have but one meaning, viz., that the City's failure to pay was the direct result of the Resolution. The City's answer, therefore, by reasonable inference admits this in the following clause which is the only allegation of the answer with reference to the subjects therein mentioned:

"Defendant further admits that on or before the twentieth day of August, 1897, the Common Council of defendant passed the resolution set forth in folios twenty and twenty one of said complaint, and thereafter that said plaintiff made demand of the defendant for the sums of money alleged in said complaint, and that defendant paid to plaintiff at the times alleged in said complaint the sums therein set forth."

That the non payment of the interest which is the subject of suit was the result of the adoption of the Resolution also appears by the certificate of the Chief Justice of the Supreme Court of Minnesota (*Printed Record, fol. 12*), wherein it is set out that the decision of the Court was in favor of the validity of the Resolution. Under the decisions of this Court it is proper to refer to that certificate for the purpose of rendering clearer and more certain anything that appears too indefinitely by the record.

Parmalee v. Lawrence, 11 Wall. 36, p. 38.
Caperton v. Bowyer, 14 Wall. 216, p. 234.
Roby v. Colehour, 146 U. S., 153, p. 159.

The allegations of the pleadings and the certificate of the Chief Justice taken together render the connection between the Resolution and the subsequent action of the City plain upon the face of the record.

But this is certainly enough in answer to an objection that is at best too metaphysical to recommend itself as possessing substantial merit.

The truth of the essential contention, viz., that the decision of the state court gave effect to the resolution, may be illustrated by a suppositious case: Suppose the Gas Company, instead of suing the City, had applied for a writ of mandamus to compel the City Comptroller to audit its claim, and the Comptroller had answered, justifying under the Resolution and also denying the City's liability, but without alleging that his failure to audit the claim had been caused by the Resolution. Suppose, also, that the Supreme Court had decided the case in favor of the Comptroller but upon the same opinion filed in this case. Could there have been any question in such case that the decision of the state court had given effect to the resolution? Assuredly not. The case supposed is, in essence, the case of *Hartman v. Greenhow* (*102 U. S., 672*). And, certainly if it be admitted that in this suppositious case the judgment would have given effect to the resolution, it must be admitted that the judgment in the present case did likewise, for the result ensuing is identical.

But if there be any doubt remaining concerning this matter, it may be resolved by an examination of a few of the decisions of this Court.

I have already referred several times to the case *Murray v. Charleston* (*96 U. S., 432*). This was an action at law brought by the owner of certificates of stock of the City of Charleston to recover a portion of the interest due thereon in accordance with their terms and then unpaid. The charter of the City, which in this particular consisted simply of re-enactments of statutes that antedated the Federal Constitution, empowered

the City Council to levy taxes upon all those holding property within the City. In 1870 and 1871 the Council passed the usual ordinance levying in each case a tax of two per cent. upon all property within its jurisdiction, and to each ordinance added a section directing the City Treasurer to withhold from the amount of interest payable to each stockowner the amount of the tax assessed upon his stock. Presumably in consequence of this enactment, Murray received only four per cent. instead of six per cent. upon his stock. He therefore brought suit for the unpaid balance. His main contention in the action was that being, as he was, a non-resident, the City Council had no jurisdiction to levy a tax upon his stock. He also set up the invalidity under the Federal Constitution of the section directing the setting-off of the tax-claim against the interest claim. Although the City set out the ordinance in full in its answer, this apparently was, as I have already said, only for the purpose of showing that the tax had been regularly levied. It did not rely upon or claim any rights under the section providing for the setting off of the tax—indeed, it is difficult to understand how it could have done so. Neither of the state courts founded its judgment upon these sections. The decision was that the City had the power and jurisdiction to tax Murray's stock, and further that it had the common-law right to set off its claim for taxes against Murray's claim for interest as it had done. The judgment simply denied Murray all relief and left the parties in the situation into which presumably they had been brought by the city ordinance. This court held that it possessed jurisdiction upon writ of error to the state court, upon the ground that the judgment of the latter had upheld the ordinance, and reversed that judgment upon the ground that the ordinance was a law of South Carolina impairing the obligation of the contract contained in the certificate of city stock. It is difficult to imagine a case in principle more nearly parallel to the case at bar.

Perhaps still more clearly in point is the case of *McCullough v. Virginia* (*172 U. S., 102*). The material facts in this case are the following:

In 1871 the Legislature of Virginia passed the first of its now

famous Refunding Acts, whereby it was provided, among other things, that the coupons attached to the refunding bonds to be issued under the act should be receivable for all taxes and dues to the State. During the period between 1882 and 1887, inclusive, the Legislature passed various other acts intended to render nugatory this provision of the Act of 1871, and, among others, an act (passed in 1887) providing that it should not be lawful for any tax officer to receive "anything else than gold or silver coin, United States treasury notes or national bank notes" in payment of taxes or dues. In 1892 McCullough, acting under the authority of one of the acts of 1882, filed his suit in the Circuit Court of the City of Norfolk to establish the genuineness of certain coupons that had been tendered by him in payment of taxes. The State did not found its defense upon any of the repudiatory acts of the Legislature, but attacked the Refunding Act itself as unconstitutional as a whole, because admittedly unconstitutional so far as school taxes were concerned. This contention, although overruled by the trial court, was sustained by the Virginia Court of Appeals, which placed its decision solely upon this ground. The effect of its judgment was simply to leave the parties in the situation in which they had been placed (presumably) by the Act of 1887. The State of Virginia had refused to pay its coupons in the manner in which it had agreed to pay them, and this refusal had been confirmed and its results perpetuated by the decision of the Court of Appeals. The suit having been removed to this Court, the jurisdiction was challenged, but the Court, speaking through Mr. Justice Brewer, held, in substance, that since the decision of the Virginia Court had given effect to the act of the State in refusing to accept the coupons in payment of taxes, that is to say, in refusing to pay the coupons by permitting them to be set off against its claim for taxes, which act had been induced by the Statute of 1887, the decision had given effect to the statute. Jurisdiction was asserted and the judgment below reversed.

Equally instructive is the case of *Houston & Texas Central Railroad Company v. Texas* (*177 U. S. 66*), the facts involved in which were the following:

During the Civil War the Legislature of Texas enacted laws permitting railway companies indebted to the Special School Fund to pay the principal of and interest upon their respective debts in treasury warrants of the State. The predecessors of the plaintiff-in-error—which were among the companies entitled to the benefit of this Act—made such payments in considerable amounts. In 1870 the Legislature passed another act providing that if each of the debtor companies, many of which were in default, would immediately pay six months' interest upon its aggregate indebtedness to the School Fund and also an amount equal to one per cent. of such indebtedness, to be applied as a sinking fund in liquidation of the debt itself, and would continue such payment semi-annually, the State would not take advantage of the previous defaults, but that if such company should fail for ten days after demand to make any such payment. the whole debt of such company should become due and the Governor should proceed without delay to foreclose the mortgage held by the State to secure the railway company's indebtedness. The state officials to whom the first payments under this act were tendered, decided for themselves that the payments theretofore made in warrants were void, and demanded from the predecessors of the plaintiff in error interest upon an amount of debt computed without allowance for any of these payments. These companies and the plaintiff in error from year to year made the payments demanded by the state officials until the indebtedness of the companies had been wiped out, assuming that the payments made in warrants had been valid payments. Each of the payments made after the passage of the Law of 1870 was, however, made under a written protest asserting the right of the Railroad Company to credit for the payments made in warrants. Payments then ceased. The Governor, acting upon the theory that had from the beginning been asserted by the state officials, instituted proceedings to foreclose the state mortgage. The Railroad Company pleaded payment and set up the unconstitutionality of the Act of 1870 as interpreted by the state officials, asserting that as so interpreted the Act impaired the obligation of the contract contained in the original law permitting payments to be made in warrants. The State did not plead, or in any way found its suit upon, the Act of 1870, but

planted itself upon the proposition that the payments made in warrants were void because the warrants had been issued to circulate as money and in aid of the Rebellion. The Court of Civil Appeals, the highest court of the State in which judgment could be had sustained the contention of the State and decreed the foreclosure of the State's mortgage and sale of such of the Railroad Company's lines as were in existence in 1870. The Court's decision did not in any way refer to the Act of 1870. The case having been removed to this court by writ of error, the jurisdiction of the court was attacked upon the ground that the Court of Civil Appeals had not upheld or given effect to the Act of 1870. This court, however, held that the foreclosure suit itself had been induced by that act and that the judgment that rendered the suit effectual gave effect to the law. Its line of reasoning seems to have been this: The contract between the State and the mortgagor companies was that when their debts had been paid in warrants it would no longer assert any claim upon their property. The Act of 1870, as interpreted by the State officials, intervened and caused the Governor to assert the lien of the State and the State to violate its contract. The judgment of the Texas Court upheld this proceeding on the part of the State, and therefore gave effect to the Act of 1870. This court took jurisdiction and reversed the judgment below. The judgment of the Court of Civil Appeals had not in any way, as against the Railroad Company, carried into effect the Act of 1870. It had, however rendered effective and binding the State's repudiation of its contract, which repudiation had occurred through the action of the State officials, but had its natural and apparently proximate cause in the Act of 1870.

But counsel for the City will probably end as he began by asserting that to hold jurisdiction of this case means that this court must take jurisdiction of every case arising from the failure of a city to pay its debts—a palpable absurdity. Is this true? Certainly not. But, if the question be properly

raised, this court has jurisdiction of every case in which a body exercising within a city the legislative power of the state repudiates the city's obligations. Default is one thing. Formal repudiation is quite another. Default is merely passive. It may signify misfortune or carelessness. It leaves room for reconsideration and good faith. It may occur through the action or non-action of administrative or merely ministerial officers. Repudiation is active, deliberate, final, dishonest, and must arise from legislative acts. At it the Constitution aims its prohibition. To prevent it, or render it ineffectual, was the primary purpose of the clause prohibiting laws impairing contract obligations. That the various purposes of the Constitution (and this purpose among others) might not fail of realization, this court was established. It must have and, in fact, has jurisdiction to review every decision that sanctions repudiation by legislative enactment, and, therefore, to review the judgment of the court below in the present case. And it may be said with entire truth that if this Court has not jurisdiction of this case, few cases of simple repudiation can reach its bar. It can rarely happen that any state or municipality will formally and by legislative enactment repudiate one of its obligations unless there be some legal pretext upon which to claim that no obligation, in fact, exists. It is also a matter of the commonest knowledge that under the American Constitutions, State or Federal, no right whatever can really or finally be created or established by a law of repudiation. As a consequence, such a law may be effective to produce a default in the performance of obligations and to compel the institution of suit, but it will rarely be pleaded as a justification for the default. When counsel for the repudiating government pleads its case, he will set up, not the law that is the real cause of the litigation, but the alleged infirmity of the obligation; and the decision of the state court in favor of his contention, although it will sanction and render effectual the unconstitutional law, will ignore the very existence of the law itself. This case will be reproduced. Thus it will be seen that to refuse to take jurisdiction of this case would be to shut the doors of the Court to many of the suitors for whose benefit the Constitu-

tion, of which the Court is the guardian and executant, was established.

I respectfully submit that the Court possesses jurisdiction to review the judgment rendered below.

BY CONTRACT, THE TERMS OF WHICH ARE EXPRESSED IN SECTION 9 OF THE GAS COMPANY'S CHARTER, THE CITY OF ST. PAUL IS UNDER OBLIGATION TO PAY THE COMPANY INTEREST AT THE RATE OF EIGHT PER CENT. PER ANNUM UPON THE AMOUNT OF THE COST OF EVERY STREET LAMP ERECTED IN OBEDIENCE TO THE CITY'S DIRECTION, FOR THE WHOLE PERIOD ELAPSING BETWEEN THE DATE OF THE ERECTION OF SUCH LAMP AND JANUARY 1, 1907, THE DATE FOR THE EXPIRATION OF THE COMPANY'S CHARTER.

The City and the Company agree, as I understand it, that upon the erection of each of the street lamps furnished by the Company in obedience to directions given by the City, a contract arose with reference to the payment by the City to the Company of interest upon the cost of such lamp, the terms of which are expressed by the proviso contained in Section 9 of the Company's charter. There is, however, a radical difference of views as to the proper construction of this proviso. It reads as follows:

"PROVIDED, That whenever the corporation of the City of St. Paul shall, by resolution of the Board of Aldermen, direct lamps to be erected and lighted in the streets of the city, the company shall make contract therefor, and furnish and provide, lay, set up and keep in good repair, at their own proper expense and charge, the street posts and lamps, and their pipes and meters, all to be of the best quality of work and material now in use. In consideration whereof, the said corporation of the city shall pay quarterly to the St. Paul Gas Light Company an interest of eight per cent. *per annum* on the amount of the sum of the original cost of said street lamps and lamp posts, gas meters and gas pipes, and the cost of laying and erecting the same."

The Company's contention is that this provision binds the Company, whenever an order of the kind prescribed

is given by the City, to furnish and erect street lamps in such numbers and at such points on its mains as may be required by the City's order, and to do this without reference to whether any contract for lighting the lamps shall first have been entered into; and that the provision likewise binds the City to pay the Company interest at the rate and times stipulated upon the cost of each lamp so erected for the whole period elapsing between the date of its erection and that of the expiration of the Company's charter.

The City's contention is that the provision does not bind the Company to erect any lamp upon the City's order unless or until a contract for the lighting of the same has been voluntarily entered into by the City and the Company; that it binds the Company to furnish and erect such lamps as it may thus have contracted to light, provided the City has directed or shall direct it to erect and light them; and that it binds the City to pay interest at the rate and times stipulated upon the cost of every lamp so erected as long as the same remains in the service of the City and no longer.

This latter construction of the provision was adopted by the Supreme Court of Minnesota. Nevertheless this court must, of course, construe the contract for itself, even though the terms thereof are expressed in the form of a statute of the State.

Jefferson Branch Bank v. Skelly, 1 Black, 436.
Fursman v. Nichol, 8 Wall., 44, pp. 58 and 59.
Louisville Gas Co. v. Citizens' Gas Co., 115 U. S., 683, p. 697.
McCullough v. Virginia, 172 U. S., 102, p. 109.

What, then, is the contract? Or, to make the question more specific, what is the proper construction of the proviso quoted with reference to the period for which the City's obligation endures?

The first point that will be noticed by any one who examines the Gas Company's charter must be that the construction naturally suggested by the relation of each of the parties to the subject matter of the provision is that contended for by the

Company. This assertion, so far as it concerns the Company's obligation to furnish and erect lamps, cannot be disputed. Nor is it less true when applied to the City's obligation to pay interest. It is expressly stated that the payments to be made by the City are to be made in consideration of the Company's making certain investments. But for this provision, these investments must have been made by the City, for street lamps, like other fixtures, are ordinarily supplied at the expense of the consumer. The Legislature transferred the burden of the investment and consequent ultimate loss of capital to the Company, but left the interest-loss where it ordinarily would have been, upon the City. The natural inference from such an arrangement certainly is that the City was intended to bear this loss as long as the loss itself should continue, subject only to the necessary limitation that the obligation to make payments must cease with the life of the payee and the expiration of all its rights.

A critical examination of the Act confirms this instinctive conclusion.

The provision that is the subject of dispute is in the form of a proviso, a form which usually indicates that the matter contained in the proviso constitutes an exception in some particular to the rule established by the principal clause to which the provso is attached. In the case under discussion the principal clause provides that the Company shall make extensions of its main pipes as fast as the business obtainable in any given section of the City becomes, in the judgment of the Company's Board of Directors, sufficient to enable the Company to defray the expenses thereof by means of the income therefrom. This establishes a qualified—perhaps merely a moral—obligation. It arises as soon as a certain income from the prospective lighting business can be foreseen with reasonable certainty, but the decision as to whether the condition precedent exists is to be made by the Company. The proviso treats another branch of the same general subject—the Company's obligation to do construction work—but in this case the obligation is unqualified so far as the language employed is concerned, provision is made for an assured income, and the decision as to the propriety of the work is confided to

the City. The fact that the obligation is expressed in the form appropriate to the creation of an exception to the rule established in the principal clause and that the antithesis of the provisions of the two clauses is so pronounced, tends to confirm the conclusion that the obligation treated in it was not intended to be a qualified or conditional obligation. Then, too, the very fact that the Legislature was careful to express in the principal clause of Section 9 the condition upon which the Company's obligation to extend its mains depends, raises a strong presumption that if it had intended the obligation to erect street-lamps to be a qualified or conditional obligation, it would have been equally careful to express the qualification or condition intended, and therefore that the unqualified language employed in the proviso was used *ex industria* in order that the obligation there created should be understood to be an absolute one.

On the other hand, the proviso requires the City to pay interest upon the "amount *of the sum of* the original cost of said street lamps;" that is to say, the amount of the cost of *all* lamps that the Company may "furnish * * * and keep in good repair" at the order of the City. The use of the expression "the amount *of the sum of*" indicates the expectation of the Legislature that interest would be paid upon the cost of all the lamps thus furnished, at least as long as it should be paid upon the cost of any. (This was a reasonable expectation, for the life of a street lamp that is kept in good repair exceeds fifty years.) Had it been the intention to limit payments to interest upon the cost of lamps in service, the language employed would naturally have been "the amount of the original cost of said street lamps * * * *for the time being in service*," or equivalent words. If the Legislature had intended that interest should be paid upon the amount of the cost of each street lamp only so long as it should remain in service, how natural and easy (how seemingly necessary, considering the strength of the contrary inference) it would have been to say so.

And is not the very silence of the interest clause upon the subject of the duration of the obligation imposed by it significant? This provision is but one of many composing the Company's charter. Like most of the remaining provisions, it

imposes burdens and creates rights. These burdens and rights are as essentially elements of the constitution of the corporation as are any of the other obligations or rights imposed or granted by the charter. None of the other provisions, excepting only those contained in Sections 10 and 11, which establish the City's right to purchase the Company's works, defines the duration of any obligation or right created by it. There is nothing in the language of the interest clause to indicate that it differs in respect of the period for which the obligation established by it is to endure from the other provision of the charter that are expressed in like general terms. Does not, then, the silence of this clause upon this subject indicate that this provision is to be governed by the same rule that is prescribed for the provisions of the Act generally? If so, all doubts are resolved by the Act itself. The period during which the rights granted and obligations imposed in general terms are to continue, is defined in Section 15, which expressly declares that, in case of failure on the part of the City to exercise its options to purchase, "this Act shall be in full force" until January 1, 1907. This expression, when applied to the charter of a corporation, must be taken to mean not merely that the Act shall retain its virtue as a law for the period specified, but that the rights granted and obligations imposed by the Act shall continue for that period.

The conclusions thus arrived at receive the strongest confirmation when we come to consider the purpose of the proviso under discussion. That purpose is manifest. The object of the Act as a whole was to promote, in the interest of the inhabitants of St. Paul, an enterprise of great public utility. The *ultimate* purpose of this proviso was to assist the City to secure gas lights for its streets at such times and in such numbers as it might require them—just as the ultimate purpose of the whole section was to assist the City to obtain gas-lighting of all sorts.

It was naturally anticipated that the principal obstacle that would stand in the way of proper street-lighting would be found in the reluctance of both the city and the company to make the necessary investments at the times required. But this matter of lighting the streets of the capital city of the State was one of paramount importance and the

Legislature evidently determined (1) to remove, in part, the obstacle of the city's reluctance to spend its money by placing the burden of this expense upon the Gas Company, and (2) to leave the company without any option to refuse to make or to postpone such investments, and therefore bound it to erect street lamps when and at such points on its mains as the City might designate. The *immediate* purpose of the provision was to transfer the duty to provide street lamps from the City to the Company and to enable the City *to compel* the Company to do the necessary construction work; and it is not to be supposed, if the Legislature inserted the provision with such purpose, that it intended the obligation of the Company to be conditioned upon anything other than the expression of the City's election. But this provision standing alone would have been fraught with danger of serious injustice to the Company. The City might in that case have ordered large numbers of lamps to be erected and lighted, only to throw them out of service at the end of some brief term. Such a proceeding might easily have resulted in the bankruptcy of the Company. Moreover, it was the policy of the Legislature, already manifested in the principal clause of the proviso, to require the Company to make investments only upon the assurance of proper returns thereon. The Legislature therefore sought to couple with the obligation of the Company an obligation of the City of a character calculated to render such an arbitrary proceeding upon the part of the City unlikely and to assure the Company a reasonable return upon its investment. The interest clause was devised, and wisely devised, in order to accomplish this object. But this clause, if the obligation of the Company to furnish and erect lamps is an absolute one, cannot accomplish this or any other object unless the City's obligation to pay interest upon the cost of a lamp continues after lighting service by means of the lamp ceases. Otherwise it would neither form a check upon arbitrary action by the City nor assure the Company an income upon its investment for a single day. Nor would it be of any value even if the City were prepared to enter into a long contract for lighting the lamps ordered. The provision is and must be substantially inoperative as long as service

continues, for the revenue accruing to the Gas Company from this service must be and in fact always has been taken into consideration by both parties in determining the price to be charged or paid for the lighting service. It is only when the service is discontinued that the provision becomes really operative, and then it provides but scant justice to the Company. A street lamp once erected is unsalable, and when once used and abandoned becomes almost absolutely valueless, in which case the capital of the owner is not merely tied up; it is practically annihilated. Certainly, it is but a small measure of justice to assure him interest upon his investment for the balance of the period for which he has embarked upon his enterprise. In this connection too, it should be remembered, that in 1856, when the Gas Company's charter was granted, the common rate of interest in Minnesota was from two and one-half to three per cent. per month; that is to say, from thirty to thirty-six per cent. per annum. Eight per cent. then was equivalent to less than one and three-fifths per cent. at the present time. If a provision identical with the one under consideration in other particulars, but fixing the rate payable at one and three-fifths per cent. instead of eight per cent. were incorporated in a charter of the present day, every one, probably, would regard it as an eminently reasonable piece of legislation.

The construction of the provision in question that is suggested above is natural, is indicated by the form and language of the provision itself and by the context, gives effect to the evident purpose of the Legislature, is thoroughly consistent, and harmonizes with the dictates of both policy and justice.

Let us turn now to the construction of the provision that was adopted by the City Council of St. Paul, and sanctioned and applied by the Supreme Court of Minnesota. The first thing that will strike any one who considers the subject is, that it reads into the proviso construed conditions and limitations of which the Act contains no suggestion, however remote; that it ignores the situation of the parties, as well as the form and phraseology of Section 9; and that it conflicts with the literal application of that clause of Section 15 of the Company's charter which provides that the act, includ-

ing, presumably, all the rights and obligations established by it, shall, under the circumstances now existing, continue in full force until January 1, 1907.

But the reflection that most forcibly strikes one when considering this theory is that the construction announced subverts the whole purpose of the provision construed. It cannot be denied that the purpose of the provision was to assist the city to provide itself with street lighting, *by placing the burden of supplying the lamps upon the Company and by taking from it both the right and the incentive to refuse to make the requisite investments;* and yet the State Court expressly says that the provision did not attain this end.

Justice CANTY, speaking for the Court, says:

"Sec. 9 provides that whenever the city 'by resolution of its Board of Aldermen directs lamps to be erected and lighted in the streets of the city' the gas Co. shall erect the same and keep them in repair; but, as we have seen, the city has no power under the charter to compel the streets to be lighted except by making for that purpose a contract voluntary as to both parties. When making such a contract, the gas Co. can refuse to contract for lighting any street lamps except those already erected, and before the city can compel the erection of more lamps it must first make a contract for lighting them" (*Printed Record, fol. 79*).

The Court's line of reasoning, while somewhat obscure, seems to be that suggested by counsel for the City upon the argument below, which was substantially this: The Gas Company's charter, although it requires the company to obey the city's order to erect street lamps, does not require it to obey an order to light them. It does provide for voluntary contracts for street lighting between the City and the Company. Such contracts, therefore, furnish the only means whereby the City can obtain a supply of gas for its lamps. But the City's power is to order lamps to be erected *and lighted.* If it orders them erected without at the same time ordering them to be lighted, the Gas Company need not obey the direction.

But the Legislature cannot have intended the City to give an order that it would have no power to enforce and therefore must have intended that it should possess itself of power to

order lamps lighted before ordering them erected. As no such power exists unless a contract for street-lighting, voluntary as to both parties, has been made, no order to erect lamps can be given, or if given need be obeyed, in the absence of such contract.

The fundamental fallacy involved in this reasoning lies in the assumption that the Legislature intended the City's authority to give the orders in question and, therefore, the Company's obligation to erect lamps, to depend on the power of the City to enforce its orders. The proviso of Section 9 makes no grant of power to the City. It merely imposes an obligation upon the Company, an obligation that raises a duty upon the City's making a certain election by giving certain directions. Whether the City can compel obedience to both branches or to either branch of its order is immaterial. The order can be given. The right to give it does not depend upon the City's ability to obtain a decree for the specific performance of its terms. Its virtue as an election to call into force the Company's obligation is the same whether it be specifically enforceable or unenforceable. When the order agreed upon has been given, that is, when the City's election has been made, the Company's duty to furnish and erect lamps arises, not by reason of the City's power to enforce its orders, but by force of the statute under which the Company exists and to the terms of which it has consented. Section 9 does not attempt to define the consequences of an order to light the lamps farther than to prescribe its effect upon the matter of their erection, which was the subject with which the Legislature was then exclusively engaged. The requirement that an order to light the lamps should be coupled with an order to erect them doubtless originated in a desire to be just to the Company and to afford it an incentive for prompt obedience to the City's orders. It furnishes an assurance that the lamps when furnished and erected will not constitute a dead investment, but will be the means of enabling the Company to increase its business. There has never been a time when the Company, even though assured of a return upon its outlay of eight per cent. per annum for a considerable time, would not have been most unwilling to tie up its capital in unused street lamps. Until 1890, the rates of interest current in St. Paul equalled or ex

ceeded eight per cent. per annum. After that year the erection of a street lamp in consideration only of payments of interest at the rate of eight per cent. per annum for the remainder of the Company's corporate life would have entailed a heavy loss. The Legislature evidently foresaw the possibility of this, and, accordingly, required every direction to erect lamps to be accompanied by an order to light them. It was not at the moment concerned with the question of the binding force of this order or with its effect upon any subject other than the supply and erection of the lamps.

But the prime source from which error in the reasoning accepted by the state court proceeds is the assumption of a false purpose for the proviso. A careful analysis of the court's decision will make it pretty evident that the court entirely overlooked the fact that the immediate purpose of the proviso was simply and only to bind the Company to furnish street lamps and to erect them whenever and wherever the City might require them. It seems to have assumed that the purpose of the proviso was to enable the City to compel the Company to light the streets. A not unnatural corollary of this assumption was found in the proposition that the provision was intended to operate only when it would afford a direct and unquestionably effective means of securing this result. It was then an easy transition to the conclusion that because the proviso cannot by its unassisted force accomplish this, its assumed object, it should be held inoperative. The mistaken assumption that underlies the Court's thought is not expressed but is implied in every sentence of its opinion. Its conclusion is really, if not nominally, founded upon this assumption, and it was absolutely inevitable that the formal reasoning employed to support such conclusion should fail to withstand the test of logical analysis.

Moreover, in reaching its conclusion the court assumed another false premise which also helps to vitiate its formal reasoning, viz., that the City cannot cause street lamps to be lighted except by means of a contract with the Company. The words "to be * * * lighted," where they occur in Section 9, have not the sense of "to be ignited." They signify "to be supplied with gas," that is, with the material used to produce light. The word "lighting" is used in the same sense in Section 1 of the

Act. This the state court appreciated, for it uses the expression "compel the streets to be lighted" and "procure gas to light its streets" interchangeably. Now the proviso in Section 9 enables the City to obtain lamps for its streets and to cause these lamps to be connected with the Company's mains and to be supplied with meters; in other words, to prepare itself to receive gas. The Gas Company as a public service corporation is presumed to have, can be compelled to have, and as a matter of fact always has had, a public tariff of rates offered to and paid by any one desiring and prepared to take gas from it. The City, irrespective of the provisions of Section 9 and in the absence of special contract, being prepared to receive the gas, has a common law right to require the Company to supply it to the street lamps upon the single condition, implied by the order, that the City shall pay for the gas so furnished at the rate at which it is paid for by other consumers. This right can be enforced by mandatory injunction. That the possibility of this course was contemplated by the Legislature is shown by the mention of *meters* as a portion of the equipment to be provided by the Gas Company. Moreover, if the Gas Company should at any time refuse to light street-lamps upon the order of the City, this would furnish ample ground for the forfeiture of the Gas Company's charter, of which the City would not be slow to take advantage.

It may be suggested here as it was upon the argument below (although it does not appear that the state court attributed any weight to the suggestion), that the words of the proviso "the company shall make contract therefor," indicate an assumption on the part of the Legislature that no obligation to furnish gas could arise in the absence of a voluntary formal contract or even an intention that the obligation to furnish and erect street-lamps should not become absolute until a contract for lighting them should be made. The exact reference of the word "therefor" is doubtful. It may refer to the purchase and erection of the lamps, or to the lighting of them, or to both subjects. But assuming, for the sake of argument only, that the contract contemplated is a street-lighting contract, no inference such as is suggested can reasonably be drawn from the insertion of this phrase. At most, the mak-

ing of a lighting contract is one of several duties enjoined. Upon the exercise of the City's election to that effect, the obligation to perform all these duties became absolute and immediate. This, it seems to me, I have demonstrated. If the phrase under consideration is to be taken as referring to a street-lighting contract it either raises an obligation upon the Company's part to enter into any reasonable contract that may be tendered by the City, which amounts to an obligation to light the lamps at a price representing the reasonable value of the service (and in that case the phrase instead of supporting, absolutely forbids either inference suggested), or—and more probably—it raises a merely moral obligation. Now, certainly the affirmative declaration of the moral duty of the Company to enter into a voluntary street-lighting contract cannot be held to indicate an intention to release it from its common-law obligation to supply gas upon demand. On the other hand, is it to be held, because two obligations, one legal and one moral, one enforceable by forfeiture and the other unenforceable, arise from the performance of the same act, that, although neither the ability to perform the legal obligation nor the utility of its performance depends upon the prior performance of the moral obligation, the obligee may nevertheless postpone the performance of its absolute legal duty to such time, if any, as shall find it prepared and willing to discharge its moral obligation? This would be to hold that coupling a moral obligation with what would otherwise be a legal obligation has the necessary effect of rendering the latter also merely moral—which, of course, would be an absurdity.

The construction advocated by the city also distorts the purpose of the interest clause. If the clause providing for the supply and erection of lamps upon the city's order be construed as requiring their erection upon the giving of the order prescribed, and without other condition, the interest clause can have but one purpose—to assure the company an income upon its investment in case the lamps erected should be thrown out of service. But even if the apparent purpose of the principal clause of the proviso be rejected, the situation of the parties, the language and form of the proviso and of the charter as a whole, the necessity to give some real, and not merely nominal,

effect to the interest clause, and considerations of justice, all still make for the construction of this clause that is contended for by the Gas Company. It therefore became necessary that counsel for the City should suggest some new purpose for the interest-clause, compatible with his theory that interest payments upon the cost of a lamp were to cease with the cessation of service. This he found in an assumed desire on the part of the Legislature to enable the Company to secure reimbursement of its outlay by means of contracts with the City. This theory was accepted by the state court, which, in its opinion, uses the following language:

"It would be unreasonable to hold that the city council might under Sec. 9 compel the gas Co. to erect street lamps and then after using them for a month or a year abandon the use of gas for street lighting purposes and thereby avoid all liability to pay any other compensation for the erection and use of the street lamps. * * * In making such contract the gas Co. can protect itself by insisting that such contract for lighting such new lamps shall cover a period of time of sufficient length that the eight per cent. per annum to be paid during that time will remunerate the gas Co. for erecting the lamps" (*Printed Record, fol. 79*).

Now, it is easily susceptible of demonstration that remuneration (by which presumably reimbursement or indemnification is meant) could not have resulted and could not have been expected to result through the operation of this provision. If the Gas Company had undertaken to "protect itself by insisting that such contract for lighting such new lamps shall cover a period of time of sufficient length that the eight per cent. per annum to be paid during that time will remunerate the gas Co. for erecting the lamps," it would have been necessary to permit the gross amount of interest collectible to equal the sum of (1) the aggregate amount lost in interest upon the cost of the lamps, calculating such interest for each year at current rates; and (2) that portion of the principal investment represented by the difference between the cost of the lamps and their value as "scrap" at the expiration of the proposed contract. Assuming that the parties would have been able to foresee the prospective fall in

the interest rates, how would this plan have worked? In 1856 (at the time the Gas Company's charter was granted) the ruling rate of interest in St. Paul was thirty-six per cent. per annum; in 1857 money could be obtained with difficulty at fifty per cent. per annum; from 1859 to 1870 the current rate was never less than twelve per cent.; from 1870 to 1881 it was at least ten per cent.; thereafter until 1890 or 1891 it was never less than eight per cent. The current rate even now is six per cent. In other words, there has never been a time that a contract extending over the entire remainder of the Company's charter life would, through the operation of the interest clause, have secured to it any substantial reimbursement of its investment. During a considerable portion of the time, including all the early years of the company's existence, *any* reimbursement would have been absolutely impossible, and during the larger part of the remaining period the amount of the reimbursement would have been insignificant. Even if we suppose that the Legislature intended that the company's interest loss should be calculated at the legal rate only (seven per cent. until 1899), no one will contend that one per cent. per annum could have been supposed to represent the depreciation that would occur in the value of an investment which necessarily was to lose all substantial value at the the end of fifty years. It is apparent, therefore, that as a practical matter the Legislature could not have expected that through the operation of the provision in question the Gas Company would be reimbursed, its investment or indemnified against loss by reason of it.

Moreover, if the City's obligation to pay interest upon any street lamp extends only to the time during which that lamp remains in service under contract with the City, the Company's right to receive interest depends in truth and fact upon the street-lighting contracts entered into between it and the City, and not upon the statute, and as a practical matter this right can have no substantial value, for whenever a street-lighting contract is entered into between the City and the Company the inevitable result must be as I have already pointed out, that the price to be paid per lamp for lighting, plus the interest to be paid per lamp, will exactly equal the price per lamp for lighting that

would have been agreed upon and paid had no such interest clause been inserted in the Company's charter.

Nor does the proviso of Section 9. under this construction, even render easier the agreement of the City and the Company upon a proper street-lighting contract, for, under the provision as thus construed before any obligation upon the part of the Company can arise or it can acquire any rights by reason of the discharge of that obligation, the parties must agree upon the price to be paid for lighting, the amount of indemnification to which the Company is entitled and the length of time required in view of the price charged and the interest to be paid in order to arrive at the point of actual indemnification. They must then agree upon a term equal to or greater than the time so required. Had Section 9 never been enacted, the City and the Company could with the same difficulty, and with no more, have agreed upon a contract producing the same results, for the same right to contract would have existed and the same right to protect itself, which under this provision would justify the Company in insistingupon a price and a term sufficient not only to compensate it for lighting the streets but also to reimburse the loss upon its investment in street lamps, would have justified it in the absence of these provisions in insisting upon the same conditions. In the absence of all statutes, the Company would have had a right to demand interest upon its investment and indemnity against depreciation of the property representing it, as a part of the price of lighting the streets. The provisions of Section 9, under the construction adopted by the state court, become the merest surplusage. It is not credible that if the Legislature had supposed that the same end could have been as well attained by the voluntary action of the parties it would have incorporated these somewhat unusual provisions in the Gas Company's charter. It is to be presumed not only that the provisions were intended to have some effect, but that they are *necessary* to accomplish the effect intended.

These considerations all lead us back to the crucial fact that the Legislature did not contemplate reimbursement by means of this interest clause but did intend to guaranty the Company a return upon its investment in case the City should at any time

choose to dispense with service by means of the street lamps that it had ordered erected.

THE CITY SHOULD BE HELD ESTOPPED TO DENY THE CORRECTNESS OF THE CONSTRUCTION OF THE CONTRACT BETWEEN THE PARTIES CONTENDED FOR BY THE GAS COMPANY.

In a multitude of cases, as expressly appears, the City has ordered the company to erect and light lamps, and it has done this by resolutions of its Board of Aldermen and Common Council and in the absence of contract. This certainly has furnished a practical construction of the provision requiring the Company to erect lamps upon the order of the City. The City has also paid to the Company interest upon the cost of street lamps that were not in use during the period for which the interest was paid. It paid interest for the year 1896-97 upon the cost of all the 3,362 lamps erected by the Company upon its order, although during a part of the year only 3,031 thereof were in use and during another part of the year only 2,690 were in use. By express recitals incorporated in at least four of the contracts entered into between the City and the Company, the city has acknowledged its obligation to pay interest in language that can indicate only its acquiescence in the construction of Section 9 contended for by the Company. In each case the recital is that the City "is under obligation to pay to said party of the first part interest upon the original cost of the street lamps, lamp posts, gas meters, gas pipes and the cost of erecting and laying the same at any time provided by said party of the first part for the service of said party of the second part at the request and order of said party of the second part. * * *"

"The street lamps * * * *at any time* provided" can signify only "all street lamps heretofore provided." In the case of the contract of March 14, 1896, this admission must have been made with full knowledge of the fact that part of the lamps so provided had been thrown out of service, for the contract itself calls for the lighting of only 3,031 lamps (*Finding of Fact, Printed Record, fol.* 67). By these various acts the City has unquestionably given a practical construction to the interest clause. When the meaning of a contract is

doubtful, the construction placed upon it by the practice of the parties is of great weight and often controlling.

First National Bank v. Jagger, 41 Minn., 308.
Staples v. Edwards, 56 Minn., 16.
Hill v. Duluth, 57 Minn., 231.
Topliff v. Topliff, 122 U. S., 121, p. 131.
District v. Gallaher, 124 U. S., 505.

And in view of the fact that during a long series of years the City has insisted upon, and accepted the benefits of, the construction of the provision in question now contended for by the Gas Company, and has entered into contracts with the Company, a part of the consideration for each of which was its express acknowledgment of the obligation that it now denies, it would seem as if it should be held estopped to deny the correctness of the construction so long acquiesced in by both parties. The case should be held to fall within the doctrine of such decisions as

Port Huron v. McCall, 46 Mich., 565, p. 574;
Meyer v. Muscatine, 1 Wall., 385, p. 391;
Van Hostrup v. Madison, 1 Wall., 291, p. 297;
James v. Milwaukee, 16 Wall., 159, p. 162;
Trust Co. v. Mercer County, 170 U. S., 593, p. 600;

in each of which it is held that a municipal or quasi municipal corporation, having accepted and acted upon a certain construction of a statute or contract, and having thereby encouraged others to make investments in reliance upon the correctness of such construction, is estopped to set up a different construction.

THE RESOLUTION OF THE COMMON COUNCIL OF THE CITY OF ST. PAUL, APPROVED AUGUST 20TH, 1897, IS A LAW IMPAIRING THE OBLIGATION OF THE CONTRACT BETWEEN THE CITY AND THE COMPANY, THE TERMS OF WHICH ARE EXPRESSED IN SECTION 9 OF THE COMPANY'S CHARTER.

In discussing the question of jurisdiction, I have attempted to demonstrate that the Resolution of August 20, 1897, is a law of the State of Minnesota and had the effect of preventing the

payment by the City of the interest due to the Gas Company upon the amount of the cost of the street-lamps that are now disused but were furnished and erected in accordance with the various directions given by the City, and that the Resolution will, unless declared unconstitutional by this court, permanently prevent such payments; in other words, that the Resolution, although invalid, has in fact prevented, and if valid would permanently prevent, the discharge of the City's contract obligation and thus render that obligation nugatory. Assuming this to have been established, the Resolution is a law of the State that impairs the obligation of the contract between the City and the Company within the meaning of the impairment clause of the Federal Constitution. It is plain repudiation—an act identical in character with those that gave rise to the constitutional prohibition in question and at which that prohibition was directly aimed. Such acts have many times been declared unconstitutional by this court.

See

Woodruff v. Trapnall, 10 How., 190.
Furman v. Nichol, 8 Wall., 44.
Murray v. Charleston, 96 U. S., 432.
Keith v. Clark, 97 U. S., 454.
Hartman v. Greenhow, 102 U. S., 672.
Wolff v. New Orleans, 103 U. S., 358.
Louisiana v. Jumel, 107 U. S., 711.
Poindexter v. Greenhow, 114 U. S., 270.
Fisk v. Jefferson Police Jury, 116 U. S., 131.
Bier v. McGehee, 148 U. S., 137.
McCullough v. Virginia, 172 U. S., 102.

All of which are upon principle directly in point.

And see

State v. Young, 29 Minn., 474, p. 526.

I respectfully submit that the judgment of the Supreme Court of Minnesota should be reversed and that the judgment of the District Court of Ramsey County should be reinstated and affirmed.

F. W. M. CUTCHEON,
Of Counsel for Plaintiff in Error.

APPENDIX A.

CHARTER

OF THE

ST. PAUL GAS LIGHT COMPANY.

(Sp. Laws, Minn. 1856, Ch. 53 as amended.)

AN ACT TO INCORPORATE THE ST. PAUL GAS LIGHT COMPANY.

Be it enacted by the Legislative Assembly of the Territory of Minnesota:

SECTION 1. That Joseph Hoy, Alexander Ramsey, William L. Banning, Edmund Rice and Charles H. Oakes, and their present and future associates, shall be, and are hereby created, constituted and declared to be a body politic and corporate, by the name of the St. Paul Gas Light Company, with full power and authority at any time hereafter to manufacture, make and sell gas, to be made of coal or other material, to be used for the purpose of lighting the City of St. Paul, and the streets, avenues, lanes, alleys and squares thereof, and any building, manufactories or houses therein contained and situate, and to have the exclusive right to lay pipes for the purpose of conducting the gas in any of the streets, avenues, lanes, alleys and squares of the said city, and to adopt any other necessary means to furnish gas to any inhabitants of said city.

SEC. 2. That the capital stock of this corporation shall not exceed two hundred thousand dollars, except in case a majority in interest, of the stockholders, shall, by vote, authorize an increase of such capital stock and that a share in the same shall be fifty dollars; and books of subscription to the said capital stock, or to such portion thereof as from time to time may, by the Directors for the time being, be deemed proper and necessary, shall be opened by the appointment or under the direction of the Directors hereinafter named, subject to such rules, limitations and conditions as by them shall be prescribed, and the stock of the said corporation shall be deemed and considered personal property.

SEC. 3. The stock, property and affairs of the said corporation shall be managed and conducted by, or under the direction of three Directors, being stockholders; that the said Directors shall hold their offices for one year, except as provided by section four in this act, and shall be elected at such time and place within the City of St. Paul as a majority of the Directors, for the time being shall appoint, and that notice of such election shall be given in at least two of the public newspapers printed in the City of St. Paul, at least fourteen days previous to the time of holding such election; and every such election shall be by ballot, and by such of the stockholders who shall attend for that purpose, either in person or by proxy, and each stockholder shall be entitled to one vote for each share of the stock which he or she may have held in his or her own name for at least fourteen days before the time of voting; and the persons having the greatest number of votes shall be the Directors, and if it shall happen that two or more persons shall have an equal number of votes, the Directors in office at the time of such election, shall, by a plurality of votes given by ballot, determine which of the persons so having an equal number of votes shall be Director or Directors, so as to complete the whole number chosen; and the Directors so chosen shall, as soon as may be thereafter, proceed by ballot, to elect one of their number President; and if any Director shall cease to be a stockholder, or shall resign, his office shall be vacant; and whenever any vacancy shall happen, the same

shall be filled by the remaining Directors by a plurality, for the unexpired term, except as provided in section fourth of this act.

SEC. 4. That Joseph Hoy, Alexander Ramsey, William L. Banning, Edmund Rice and Charles H. Oakes, shall be the first Directors of the said company, who shall hold their offices until one year after the said company shall be organized and in practical operation, and until others are chosen in their places, and they shall proceed to choose their President at such time and place as they, or a majority of them, shall determine. Any of the above named Directors on resigning may designate the person or persons to fill the vacancy, provided that the person or persons so designated are stockholders of said company, for the unexpired term; vacancies by death shall be filled by the remaining Directors, by a plurality, for the unexpired term.

SEC. 5. The corporation formed under this act, shall, in addition to the powers hereinbefore conferred, have power, first, to purchase and hold real estate; second, to erect and maintain all necessary and convenient buildings, fixtures and machinery for the aforesaid purposes, or incident or necessary thereto.

SEC. 6. It shall and may be lawful for the Directors, or a majority of them, to require payment of the subscription to the capital stock of said corporation, at such times and in such proportion as they, or a majority of them, shall deem fit, under the penalty of forfeiting any previous payment or payments thereon, and that previous notice of the instalments required to be paid after the first, and of the time when the same are to be paid, shall be published at least fourteen days, in two of the public newspapers printed in the City of St. Paul; provided, no such forfeiture shall be made, until the company shall be organized and in practical operation.

SEC. 7. If any person or persons wilfully do, or cause to be done, any act or acts whatever, whereby the works of the said corporation, or any pipe, conduit, plug, cock, reservoir, or any engine, machine, structure or any matter or thing appertaining to the same, shall be stopped, obstructed or impaired, weakened, injured or destroyed, the person or persons so offending

shall forfeit and pay to the said corporation treble the amount of the damage sustained by means of such offence or injury, to be recovered in the name of said corporation, with costs of suit, in any Court having cognizance thereof.

SEC. 8. The said company shall be deemed to be organized when the President shall be elected, and shall be deemed to be in practical operation from the time the contract to build the work is made.

SEC. 9. That it shall be the duty of the St. Paul Gas Light Company to prosecute the works necessary to the lighting the whole city and suburbs with gas, and to lay their pipes in every and all directions, whenever the Board of Directors shall be satisfied that the expenses thereon shall be counterbalanced by the income accruing from the sales of gas. It shall also be their duty to put the gas works into successful operation as soon as practicable: PROVIDED, that whenever the corporation of the City of St. Paul shall, by resolution of the Board of Aldermen, direct lamps to be erected and lighted in the streets of the city, the company shall make contract therefor, and furnish and provide, lay, set up and keep in good repair, at their own proper expense and charge, the street posts and lamps, and their pipes and meters, all to be of the best quality of work and material now in use. In consideration whereof, the said corporation of the city shall pay quarterly to the St. Paul Gas Light Company, an interest of eight per cent. per annum on the amount of the sum of the original cost of said street lamps and lamp posts, gas meters and gas pipes, and the cost of laying and erecting the same. But said company shall not be bound to lay every pipe in such places where the proceeds from the sale of gas light would not be sufficient to defray the expenses of furnishing the same.

SEC. 10. That if after the expiration of twenty years from and after the first day of January, 1857, the corporation of the City of St. Paul should resolve to purchase the said gas works from the St. Paul Gas Light Company, which they hereby have a right to do, the price shall be fixed by arbitrators, one or more to be chosen by the President and

Directors of the company, and an equal number by the Board of Aldermen of said city; said arbitrators shall not be stockholders in said company nor members of said Board of Aldermen. They shall take into consideration the value of the gas works, and the lands, grounds, building, utensils, rights and interests, and everything thereunto appertaining; and if they agree and so report in writing, their award shall be binding on the parties; but if they should not agree, then the said arbitrators shall elect some creditable and disinterested person umpire between them, whose decision and award, in writing, reported to the parties above, shall be binding and conclusive; any law to the contrary notwithstanding. To the amount so agreed upon shall be added seven per centum advanced on said valuation, which amount, with the seven per centum on the same, shall be paid by the corporation of the said city to the said company in full consideration for their works, lands, ground, buildings, interests, rights, utensils, &c., belonging to to the said gas works.

SEC. 11. That in the event the said city shall decline to purchase at the end of twenty years, as provided in the preceding section, then the company shall, in like manner, at the end of twenty years from and after the first day of January, A. D. 1877, and provided the Board of Aldermen then resolve to purchase the same, sell and convey the city all their estates, interest and titles, to the said gas works in the manner as is before provided in section ten, except that to the amount of valuation then so to be agreed upon, shall be added only five per centum advanced, which amount, with the said five per centum on the same, shall be paid by the city to the company, in full of all consideration for the said gas works and their appurtenances: Provided, however, That the corporation of the city of St. Paul shall notify the President and Directors of the company of their intention to purchase at either of the times prescribed, at least six months previous to the expiration of the said terms of twenty and twenty years, respectively, and a failure to notify as herein provided, shall be deemed a refusal on the part of the city to purchase the interests of said company.

SEC. 12. The corporation of the city of St. Paul and other

corporations and companies, are hereby authorized and empowered to subscribe for any number of shares of stock in this company, and to provide for the payment of the same as may be agreed upon with the Board of Directors or their agents, and may purchase stock of any holders thereof and sell the same; and they may vote incorporate capacities by such representatives as they may prescribe by their regulations, ordinances or by-laws, and the votes of all such representatives shall be given as those of any other stockholders; subject, however, to the regulations of the company in all respect not inconsistent with the true intent and meaning of this section.

SEC. 13. The Board of Directors are hereby authorized to receive from any company, any bonds, notes, or other securities, in payment of, or as security for stock purchased or subscribed, and upon such terms as may be agreed upon, or in such manner, on such conditions and in such instalments as they may think to the interest of the company; and they may receive, on deposit or loan, and upon such terms as the parties interested may agree upon, any funds, the temporary or permanent use of which may be offered them, and the use of which may be beneficial to the company. And that for the purpose of increasing the works, extending the pipes, and furnishing a working capital for said company, from time to time, or of discharging any debts or liabilities which it has heretofore incurred or may hereafter incur in the prosecution or conduct of its business, or in the administration of its affairs, they may issue and sell the bond of the company, and secure the payment of the principal and interest of the same by mortgage upon the company's property and franchises.

SEC. 14. The corporation of the city of St. Paul and the Board of Directors of the St. Paul Gas Light Company may contract for and make regulations relating to the lighting of said city with gas, in such manner as may be agreed upon, and they may make generally such contracts in relation to the business of the company as may be beneficial to them and the public.

SEC. 15. This act shall be in force for the term of twenty-

five years from and after the first day of January, in the year of our Lord one thousand eight hundred and fifty-seven, unless the company hereby incorporated shall sell and convey within the said term of twenty years, their gas works, lands, rights and privileges, as herein provided, to the City of St. Paul; in which event said gas works, and all rights, powers and privileges hereby granted, shall be invested in the Mayor, Aldermen and citizens of St. Paul, or [in] their corporate capacity; and the said city shall have all the powers and be invested with all the rights and privileges of the individual stockholders, and also of all such as are invested in the President and Directors of said company by virtue of this act; but should the said city not resolve to purchase at either of the times provided herein, then this act shall be in full force for an additional term of ten years from and after the last date mentioned for such sale and purchase, and no longer: Provided, That this act shall be void unless said company shall construct and lay at least one and a half miles of main pipe, and shall be ready to furnish gas and fixtures to the city and citizens of St. Paul, so far as they can be conveniently supplied from said main pipes, within eighteen months from the passage hereof.*

SEC. 16. This act shall be in force from and after its passage, and shall be deemed a public act, and be favorably construed for the purposes herein expressed and declared in all Courts and places.

*Extended to December 1, 1857, by *S. L. Minn., 1857, Ch. 65, §1.*

APPENDIX B.

PORTIONS OF THE CHARTER OF THE CITY OF ST. PAUL, AS COMPILED AND PUBLISHED BY AUTHORITY OF THE COMMON COUNCIL OF THE CITY IN 1892.

(in force in 1897).

SEC. 28. "He [the Comptroller] shall at all times have access to the said reports, books, papers, vouchers and accounts, and shall assist the treasurer in carrying out the provisions of chapter five of this act All claims and demands against the city, before they are allowed by the common council, shall be audited and adjusted by the comptroller, and all orders on the treasurer shall be examined and countersigned by him before they are delivered by the city clerk." (*Sp. Laws Minn. 1874, Ch. 1, Sub. Ch. III, Sec. 13*).

* * * * * * *

SEC. 36. "The common council shall have power at any time to require other and further duties to be performed by any officer whose duties are herein prescribed, not inconsistent with this act." (*Sp. Laws Minn. 1874, Ch. 1, Sub. Ch. III, Sec. 22*).

* * * * * * *

SEC. 38. "On and after the eleventh (11th) day of May, A. D. eighteen hundred and ninety-one (1891), the legislative authority of the City of St. Paul shall consist of the assembly and board of aldermen, which meet separately, save as herein provided, for the transaction of business, at the Court House or City Hall of said city, and each of said bodies shall meet at such times as it may determine by resolution. Said two (2) bodies shall be known as the common council of the City of St. Paul." (*Sp. Laws Min. 1891, Ch. 6. Sec 1, Sub. Sec. 1*).

* * * * * * *

SECTION 40. "The Common Council shall have the management and control of the finances (subject to the provisions of this act) and all the property of the city, and shall

likewise, in addition to the power herein vested in them, have full power and authority to make, enact, ordain, establish, publish, enforce, alter, modify, amend and repeal all such ordinances, rules and by-laws for the government and good order of the city, for the suppression of vice and intemperance, and for the prevention of crime, as they shall deem expedient; * * * and all such ordinances, rules and by-laws are hereby declared to be and have the force of law. *Provided*, That they be not repugnant to the constitution and laws of the United States, or of this State; and for these purposes shall have authority by ordinances, resolutions or by-laws.

* * * * * * *

Sixth. To prevent the encumbering of streets, sidewalks, lanes, alleys, public grounds or wharves, with carriages, carts, wagons, sleighs, boxes, lumber, fire wood, posts, awnings, or other materials or substances whatever."

Eleventh. * * * To erect lamps and to provide for lighting the city, and to control the erection of gas works, or other works for lighting the city, streets, public grounds and public buildings, and to create, alter and extend the lamp districts. * * *

Thirty-first. To remove and abate any nuisance, obstruction, or encroachment upon the streets, alleys, public grounds and highways of the city." (*Sp. Laws Minn., 1874, Ch. 1. Sub. Ch. IV, Sec. 3*).

* * * * * * *

SEC. 44. "The common council shall have the care, supervision and control of all public highways, bridges, streets, alleys, public squares and grounds, and parks and sewers, and all other public improvements and public property within the limits of said city" (*Sp. Laws Minn., 1874, Ch. 1. Sub. Ch. IV, Sec. 7*).

* * * * * * *

SECTION 56. "All moneys belonging to said city shall be under the control of the Common Council, and shall be paid out only upon the order of the mayor and clerk, countersigned by the comptroller, duly authorized by virtue of a resolution of the

common council, two-thirds (2/3) of the whole number of each body voting therefor * * * (*Sp. Laws Minn., 1891, Ch. 6, Sec. 2, Sub. Sec 2*).

SECTION 57. * * *.

The said common council, by a three-fourths (3/4) vote of all members of each body, may levy an annual tax upon all property in said city, taxable under the laws of this State to and for the specific purposes following, that is to say: * * *

Sixth. To provide for the lighting of said city.

* * * * * *

Twenty-fourth. To provide a general fund for the current and incidental expenses of said city, not hereinbefore specified and provided for, and all money received from liquor, butcher, dog, dray, wagon, truck, express, theatre, circus and other licenses, and also all money received from the municipal court, market house and market, workhouse, building inspector's permits, poundage receipts, and from all other sources (save when received for a specified use or purpose), shall be credited and passed to the general fund.

The amount of money to be raised by taxation for the above purposes, as aforesaid, shall only be so much as will be necessary, in addition to the amount received from all other sources, for an economical administration of the affairs of said city."

(*Sp. Laws Minn. 1891, Ch. 6, Sec. 3, Sub. Sec. 3*).

* * * * * *

SEC. 61. "It shall be the duty of the comptroller of said city, in auditing and adjusting claims and accounts, as in the charter of said city provided, to designate and specify upon each claim, demand and account so audited and adjusted the particular fund or account, as said fund or account is shown by the last tax estimate and the tax levy when made based thereon, out of which the same shall be paid; and no claim, demand or account shall be audited or adjusted by him, or reported to the council, until there shall be sufficient money in the treasury to the credit of the particular fund or account, out of which the same is payable, to pay the same, as well as other unpaid claims before that time audited and allowed

against such fund" (*Sp. Laws Minn. 1891, Ch. 6, Sec. 3, Sub. Sec. 7*).

* * * * * *

SEC. 64. "The common council of said city shall have no power or authority to allow or authorize the payment of any claim or demand against the said city, or to authorize the appropriation of any money of said city in behalf of said city, unless sufficient money out of which to satisfy said claim, appropriation or demand, and applicable thereto, is actually in the treasury of said city, or has been embraced in a then existing and uncollected tax estimate or levy; *provided however*, that this provision shall not apply to a contract for the satisfaction of which a local assessment is to be made.

No ordinance, order or resolution of said council appropriating money or requiring the payment or expenditure of money by said city, and no contract requiring the payment of money by said city, shall be operative or valid unless there is specified therein the particular fund out of which the same is to be paid" (*Sp. Laws Minn. 1891, Ch. 6, Sec. 3, Sub. Div. 10*).

* * * * * *

SEC. 609. "When any suit or action shall be commenced against said city, the service thereof may be had by leaving a copy of the process, by the proper officer, with the mayor; and it shall be the duty of the mayor forthwith to inform the city attorney thereof, who shall take such other proceedings as by the ordinances or resolutions of said council may be in such case provided, or as may be needful in the matter (*Sp. Laws Minn. 1874, Ch. I, Sub. Ch. XII, Section 7*).

* * * * * *

SEC. 624 * * * "All printed compilations of the laws and ordinances of the city, and all printed publications of the proceedings of the common council or of the board of public works, or any of the officers of said city, if published or purporting to be published, compiled or revised by or under the authority of the said city or any of its officers, shall be admissible in all courts of law, and on all other occasions in this state as evidence of such laws, ordinances and proceedings" (*Sp. Laws Minn., 1874, Ch. I, Sub. Ch. XII, Section 22*).